

# **APPENDIX A**

## APPENDIX A -- CUSTODY AND PARENTING TIME SUBCOMMITTEE REPORT

Our subcommittee has drafted three proposed Rule amendments and comments that we believe will help eliminate adversarialness and partisanship during the parenting evaluation process. They also propose separation of the process of mediation from parenting evaluations, and more realistic timetables that we believe will facilitate mediations and reduce posturing. We also have considered custody/parenting criteria in all fifty states and incorporated in this report discussions of factors we believe should be considered in parenting evaluations which we believe are related to the New Jersey statutory criteria. However, for reasons discussed in this report, no Rule revisions in this regard are recommended.. Another proposed Rule also substantially revises child interviewing requirements and makes such judicial interview of children discretionary with the Court.

### Bifurcation of Custody Mediation and Evaluation

We initiated exchange of correspondence and personal and telephone conferences with several mental health professionals who are routinely employed by lawyers and Courts in connection with parenting issue evaluations. The names and addresses of these professionals are set forth in Exhibit A attached hereto.

Our interaction with the mental health professionals raised for us an issue that we had not considered when we prepared our subcommittee agenda at the beginning of the term. The Rules, as they now stand, provide that where there is a genuine and substantial issue as to custody, the Court must refer the case to mediation, in accordance with the provisions of *R.* 1:40-5. See *R.* 5:8-1.

Dissolution Standard 14(B) and Matrimonial Rule Implementation Recommendation 15(B)) provides that the genuineness of a custody dispute is to be determined at the first Case

Management Conference<sup>1</sup>. The pertinent Dissolution Standard and Recommendation sets forth:

Unless there is a significant change in (sic) circumstances, the determination of a genuine custody dispute should be determined at the Case Management Conference and not be raised at a later date.

The Special Matrimonial Commission Report and the Rule Implementation Recommendations of the Conference of Family Presiding Judges concluded that R. 5:8-6 was unmanageable, in requiring that a custody hearing should be scheduled no later than three months after the last responsive pleading. It recommended that the time period should be increased to six months, but we are not aware that this change has been adopted. Moreover, there is no tolling of this date by virtue of a reference to mediation. In other words, while the mediation process unfolds, so too does the time period for completion of the custody evaluation and scheduling of the hearing date.

The experts we talked with uniformly agreed that it was inappropriate both to mediate and to perform a custody evaluation at the same time. We pointed out to them that in view of the court timetables for completion of reports, and the mandatory nature of Best Practices procedures and time limits, lawyers had no choice but to commence both at the same time. If they did not, they would be faced with losing the ability to obtain an appropriate custody evaluation and discovery before the hearing.

The mental health professionals believed that many people were not emotionally ready to deal with custody issues in the three to six month time frame. They also felt that the

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<sup>1</sup> These standards are included as Exhibit J to our final report. They are reprinted from *The Conference of Family Presiding Judges Presents the Family Division Report on Best Practices and Standardization to the Judicial Council*, July 30, 1999.

approaches of mediation and evaluation were completely different. Mediating litigants were encouraged to be open, to compromise, and to be vulnerable. Litigants in the midst of evaluations were encouraged by the nature of the process to be advocates for their position, and necessarily guarded in an attempt to achieve their objectives.

The experts uniformly believed that an evaluation should not start until mediation had been unsuccessful. They analogized the process by which divorcing couples are ready to deal with such gut-wrenching issues as care and timesharing of their children to a grieving process. It is analogous to the grieving that occurs in connection with death of a loved one. A cherished relationship has died; the constancy of interactions are no longer in place. The professionals believed that passage of time eases grieving and anger and enables people to approach parenting issues more rationally and cooperatively. They believe the process should take longer and that the Court's insistence upon precise dates interfered with people's needs. One even used those precise words.

The experts also believed that the mediation process generally should take three months, unless there are cases that clearly have no chance of resolution. We informed them that we did not believe the system would allow such a period for emotional processing. The experts indicated, at a bare minimum, six to eight weeks were necessary for mediation before evaluations should commence, unless for other reasons mediation was stopped. We were surprised at the intensity of these expressed convictions. When we asked why they had not brought this to the attention of the judiciary before, they replied, No one had asked before.

The subcommittee believes that the Rules should clearly indicate that evaluations should not commence until mediation has been concluded. We have proposed a Rule that facilitates

this objective. The current Rule provides that a custody hearing must be set within three months of the last responsive pleading. Since the genuineness of custody is not determined until the first Case Management Conference, which usually occurs thirty days after the last responsive pleading, that is the time when a custody dispute is usually submitted to mediation. Therefore, pursuant to the current Rules, two months would be left, both to mediate and to conduct custody evaluations, before trial. This is completely unrealistic and, according to the mental health experts consulted, counterproductive.

The subcommittee believes that the six month hearing date recommended by the Dissolution Standard and Implementation Rule, should be set from the date of the last responsive pleading. The subcommittee also believes litigants should be encouraged to identify parenting issues and to commence mediation as soon as possible so that process is given as much time as possible to air and to resolve issues. However, the subcommittee does not intend that mediation must last the entire three month period. The proposed Rule amendment is not intended to take precedence over R. 1:40-5(b) and R. 1:40-4(f). The proposed Rule sets forth a time period during which mediation should be completed, with a provision to extend same for appropriate cause. The subcommittee believes that initial and subsequent Case Management Orders must track these timetables so that case control objectives are satisfied. The proposed Rule and Comment are set forth as part of Exhibit I to this report.

#### Children Interviews

In our investigation and discussions we sought to revisit the issue of judicial child interviews in custody and parenting cases, a controversial issue that has engendered judicial debate. See *Mackowski v. Mackowski*, 317 N.J. Super. 8 (App. Div. 1998).

This topic engendered lively discussions. All of the experts with whom we consulted were of the view that how young children say things and act is frequently more important than what they say. Of course, that is not always the case, especially when the children are older and more intellectually developed or precocious. One expert - - who was vehemently opposed to judges interviewing children - - was concerned that children who were interviewed by judges developed the view that their comments or silence effected the course of their parents' and their lives. This concern was expressed as well by Judge Kestin in *Mackowski v. Mackowski*, *supra*, 317 N.J. Super. at 15.

The subcommittee believes the problem with child interviews is difficult. Legally, a child's preferences must be considered by a court when assessing custody. That statutory direction has been implemented by Court Rule which requires a court to interview children who are at least seven years of age and gives the court discretion not to do so if the children are beneath the age of seven. See R. 5:8-6.

However, the statute does not have the same direction. The statute does not require a court to interview a child. The current version of N.J.S.A. 9:2-4 simply requires the court to consider the preference of a child when of sufficient age and capacity to reason so as to form an intelligent decision. The prior version of N.J.S.A. 9:2-4 required the trial judge to conduct the interview of the child and also to give due weight to the child's preference. See *Lavine v. Lavine*, 148 N.J. Super. 267, 271 (App. Div. 1977). The statute does not require or entitle the child to a right to express an opinion to the finder of fact and ultimate decision maker as suggested in *Mackowski v. Mackowski*, 317 N.J. Super. 8, 12 (App. Div. 1998).

The simple fact is that few judges are equipped, regardless of their involvement in enhanced judicial training (See *Mackowski v. Mackowski*, *supra*. 317 N.J. Super. at 13), appropriately and effectively to interview a child without extreme discomfort being caused for the child by virtue of either the awkwardness of the judge or the circumstances of the interview, e.g. in chambers, robes, etc.

We believe that mental health professionals are best trained to observe interaction between children and parents and to obtain information about the child's preferences. Despite the concerns in *Mackowski* that the reliance upon child interviews by experts will concede fact finding responsibility, the subcommittee believes that experts' opinions about a child's preferences are never conclusive and are subject to cross examination and final determination by the court. We also agree that a court should not be deprived of interaction with the child, if, in its discretion, it concludes that it wishes such interaction. Both views can be accommodated by making clear in the Rule that the court does not have to interview a child and in its discretion may decline to do so, so long as its reasons for declining are stated, on the record before trial. Since interviews of children seven years and older are no longer mandatory, it seems fair that ordinarily the Court decide reasonably before trial whether to interview the child(ren), unless there is good cause to do otherwise. The precise time of any child interview shall be as the Court in its discretion determines.

#### Custody Standards and Criteria

The subcommittee decided to undertake an examination of custody criteria statutes and laws in all fifty states. This research project was a substantial undertaking and was completed with the staff assistance of the law firms of two of our members. In reviewing the statutory

criteria for all 50 states, we identified 49 separate criteria. Not all criteria were considered by each state, but we were able to identify 49 criteria by reviewing all state statutes. In completing this mammoth research project, we have, in addition, compiled a compendium of the statutes of each state, which is not attached because of its size. However, attached as Exhibit B is a dot chart identifying all states in alphabetical order and the criteria which they consider. Many of these criteria are really variations of the same theme. In other words, different states use the same or an analogous concept, but articulate it differently. Attached as Exhibit C are 11 conceptual criteria that are summaries of criteria that appear to be most commonly found in statutes of other states, identified by state.

The subcommittee selected four additional factors which it believed pertinent for consideration in connection with custody disputes. These factors include the following:<sup>2</sup>

1. The strength and health of the psychological bond between all parties involved (interaction and relationship of the child with his parents and siblings);
2. Parenting capacity, including the psychological and physical health of each parent, and their commitment to providing the child with shelter, food, clothing, medical treatment, and education. (fitness of the parents; needs of the child).
3. The needs of the child, including health, physical, emotional, social, religious and educational (the needs of the child).
4. The appreciation of the role of the other parent in the child's upbringing, including any alienation that has been fostered by one parent or the other. (Parents' willingness

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<sup>2</sup> The current New Jersey statutory criteria which are analogous are set forth in parenthesis.



to accept custody and any history of unwillingness to allow visitation based upon substantiated abuse).

Although the subcommittee believes that these factors are integral to the New Jersey statutory criteria and are appropriate for consideration, we are mindful of disagreement among the full Practice Committee as to whether it is permissible by Court Rule to appear to amend substantive statutory law. Some of us did not believe that a Legislative amendment was necessary to direct attention to these concepts, all of which reasonably can be construed to be integral to consideration of the enumerated statutory criteria. Moreover, the statutory criteria specifically references that courts are not limited to the identified criteria, but may consider other relevant factors.

In addition, the mental health professionals with whom we met and talked agreed that it would be important for these factors to be considered in connection with parenting evaluations and decisions.

However, because of the significant consensus against the concept of suggesting consideration of such factors by Rule amendment, the subcommittee has chosen not to make such a recommendation. We do wish to emphasize that we believe such factors are directly pertinent to issues that must be reported on by mental health professionals in the event resolution fails.

#### The Evaluation Process: Collection of Data and Number of Evaluators

In connection with its work, the subcommittee reviewed the guidelines for parenting evaluations of various groups. Attached hereto as Exhibit D are the Specialty Guidelines for the Board of Psychological Examiners of New Jersey. Attached as Exhibit E are the 1994

Evaluation Guidelines of the American Psychological Association. Attached as Exhibit F are the Guidelines and Practice Parameters for Child Custody Evaluations of the American Academy of Child and Adolescent Psychiatry.

The subcommittee is aware that the New Jersey Psychological Association formed a forensic committee to study these procedures and that that forensic committee requested that the Board of Psychological Examiners adopt the less rigorous guidelines of the American Psychological Association in replacement of the New Jersey Specialty Guidelines. After reviewing all guidelines we concluded there was no significant conceptual difference between them. Although the specialty guidelines are more detailed and probably present greater opportunity for cross examination, we believe that the 1994 guidelines of the American Psychological Association and the Practice Parameters of the American Academy of Child and Adolescent Psychiatry cover the same adjective and substantive procedures. We believe the guidelines of these organizations identify mental health and psychological issues and procedures that the court should be aware of and consider in discharge of their discretion relating to parenting issues.

However in reviewing the guidelines of these organizations and in discussions with the psychiatrists/psychologists and social workers with whom we interacted, our own experiences as judges and lawyers were confirmed. Custody evaluations are traumatic for adults and children and the fewer that have to be conducted the better. Moreover, although the subcommittee initially thought that the trauma of the process for children could be eased by having the children meet once with all evaluators, the experts believed this would not be productive because there would be a potential for substantial intimidation of the children

involved. Such a procedure was perceived by them to have a potential impact on the nature of the data collected.

There is no question that the vast body of mental health literature supports the view that the more involved the evaluation process, the more traumatic it is for children. See AHigh Conflict Custody Cases: Reforming the System for Children Conference Report and Action Plan, Family Law Quarterly, Volume 34, Number 4, Winter 2001, p. 593 conference sponsored by the American Bar Association Family Law Section and The Johnson Foundation, Wingspread Conference Center, Racine Wisconsin, September 8-10, 2000, attached hereto as Exhibit G. Although this trauma may be short term, and may be necessary for a greater long term good (designation of the proper parenting/custodian), nevertheless the subcommittee believes there are sufficient countervailing concerns to direct experts to perform strictly non-partisan evaluations. After all, this is precisely what the professional standards of mental health groups require, regardless of by whom they are engaged. The subcommittee also believes that if the experts make different recommendations, the court may direct them to confer to attempt either to reach resolution on all or a portion of the outstanding issues, or to make a common recommendation.

Public policy encourages resolution of disputes between litigants. No where is this policy more important than in connection with disputes between parents about their own children. Encouraging communication between experts will foster resolution by litigants and minimize judicial involvement. If resolution is impossible, and trial must occur, the Rule provides that before that day arrives, there is potential for full dialogue about differences in an attempt to resolve issues or foster a common recommendation.

### Issues Reserved

The subcommittee was interested in studying the use of audio and videotapes in connection with custody evaluations in a further effort to minimize the frequency of necessary interviews. It was thought that such audio and/or videotaping might reduce the evaluation sessions. However, there was great reservation expressed by many of the experts with whom we interacted about the use of video and recording devices. Although the experts acknowledge the law authorizing audiotaping in *B.D. v. Carley and Sackowitz, et. al*, 307 N.J. Super, 259 (App. Div. 1997) and the implicit approval for psychologists to use video taping as set forth in the Comment to Guideline<sup>7</sup> of the New Jersey Board of Psychological Examiners Specialty Guidelines, nevertheless there were concerns expressed. We had intended to investigate how these issues were handled in other states and further to survey psychological literature with respect to studies that may have been done regarding video and audiotaping of evaluation sessions. Unfortunately we have been unable to complete this work and, at this time, therefore are unable to make a recommendation to the full Committee within this term. We do suggest this issue be reserved for further review during the next term of the Practice Committee.

We have done substantial research on the distinction between functions served by attorneys appointed for children as opposed to guardians. Although our interim report provided a lengthy analysis, we believe much additional work is required before we can decide whether a further recommendation should be made to the full Committee concerning the distinctive roles of attorneys and guardians for children. Therefore we recommend that this issue too be reserved

for continued study and consideration by our subcommittee in connection with the next Practice Committee term.

The full Committee expressed concern about *R. 5:8-1*, insofar as probation officers are authorized to conduct custody evaluations. This was not an issue we initially contemplated or discussed and the appropriateness of that practice continuing is another issue we believe should be reserved for investigation in the next term.

Finally, one of the full Committee members was offended by the notion that a Court's expert's report should be given to the Court. Although that provision has been in the Rule for many years, it was the perception of that Committee member that such a report was hearsay and, therefore, not properly presented to the Court. This issue, too, can be addressed during the next session.

**EXHIBIT A**

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**EXHIBIT B**



		Alabama AL ST §30-3-1	Alaska AS 25.24.150	Arizona A.R.S. §25-403	Arkansas A.C.A. §9-13-101	California West's Ann. Cal. Fam. Code §3011
1	Physical, emotional, mental, religious and social needs of the child	• Including moral and material needs; excluding physical, mental and religious needs	•			
2	Capability and desire of each parent to meet those needs	•	•			
3	Wishes of child	•	•	•		
4	Love and affection existing between child and each parent	•	•			
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity		•			
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent		•	•	•	
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents		•		•	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child		•			•

		Alabama AL ST §30-3-1	Alaska AS 25.24.150	Arizona A.R.S. §25-403	Arkansas A.C.A. §9-13-101	California West's Ann. Cal. Fam. Code §3011
9	Other factors that the Court considers pertinent		•		•	
10	Wishes of child's parent or parents as to custody			•		
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests			•		
12	The child's adjustment to home, school and community			•		
13	Mental and physical health of all individuals involved	• Of parents		•		
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian			•		
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody			•		
16	Past and present compliance by both parents with their rights and responsibilities to their child					
17	Age and capacity of child	•	•			
18	Gender of child	•				
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials					

		Alabama AL ST §30-3-1	Alaska AS 25.24.150	Arizona A.R.S. §25-403	Arkansas A.C.A. §9-13-101	California West's Ann. Cal. Fam. Code §3011
20	The permanence, as a family unit, of the existing or proposed custodial home or homes					
21	Moral fitness of each parent, insofar as it affects the welfare of the child					
22	Child's cultural background					
23	Intention of either parent to relocate residence of child					
24	Age, character and stability of parents	•				
25	Respective home environments offered by parents	•				
26	Education and medical needs of child	• Education only				
27	Happiness and welfare of child					
28	Whether present or past living conditions adversely affect child					
29	Determination of parent that has had continuity of care prior to separation					
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare					
31	Employment of parent and responsibilities of that employment					
32	Causes for dissolution of the marriage or legal separation					
33	Potential disruption of the child's social and school life					
34	Sincerity of each parents' request					

		Alabama AL ST §30-3-1	Alaska AS 25.24.150	Arizona A.R.S. §25-403	Arkansas A.C.A. §9-13-101	California West's Ann. Cal. Fam. Code §3011
35	Parents' ability to financially support a custody arrangement					
36	Parent's respect for other parents' rights and responsibilities including right to privacy					
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future					
38	Availability of public or private childcare services					
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party					
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child					
41	Criminal conviction					
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child					
44	Number of children					

		Alabama AL ST §30-3-1	Alaska AS 25.24.150	Arizona A.R.S. §25-403	Arkansas A.C.A. §9-13-101	California West's Ann. Cal. Fam. Code §3011
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor					
46	Effect on child if one parent has sole authority over the child's upbringing					
47	Personal associations					
48	Lifestyle/sexual relationship					
49	Credibility, conduct and stability of parents					

		Colorado C.P. A. §14-1-124	Connecticut C.G.S.A. §46b-56	Delaware 13 Del.C. §722
1	Physical, emotional, mental, religious and social needs of the child	• Excludes religious and social needs		
2	Capability and desire of each parent to meet those needs	• Placing child's needs ahead of own needs		
3	Wishes of child	•	•	•
4	Love and affection existing between child and each parent	•		
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity			
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•		
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•		•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child			
9	Other factors that the Court considers pertinent			
10	Wishes of child's parent or parents as to custody	•		•
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests	•		•

		Florida West's F.S.A. §61.13	Georgia Code, 19-9-1	Hawaii HRS §571-46	Idaho I.C. §32-717	Illinois 750 ILCS 5/602
1	Physical, emotional, mental, religious and social needs of the child			• Includes moral and spiritual wellbeing, but excludes religious and social needs		• Including moral, excluding religious and social needs
2	Capability and desire of each parent to meet those needs					
3	Wishes of child	•	•	•	•	•
4	Love and affection existing between child and each parent	•				
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity	•			•	
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•				•
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•	•	•	•	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child					
9	Other factors that the Court considers pertinent	•	•			
10	Wishes of child's parent or parents as to custody				•	•

		Florida West's F.S.A. §61.13	Georgia Code, 19-9-1	Hawaii HRS §571-46	Idaho I.C. §32-717	Illinois 750 ILCS 5/602
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests				• Parents and siblings only	•
12	The child's adjustment to home, school and community	•			•	•
13	Mental and physical health of all individuals involved	•			•	•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian	Of parents				
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody					
16	Past and present compliance by both parents with their rights and responsibilities to their child					
17	Age and capacity of child	•	•	•		
18	Gender of child					
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials	•				
20	The permanence, as a family unit, of the existing or proposed custodial home or homes	•				
21	Moral fitness of each parent, insofar as it affects the welfare of the child	•				
22	Child's cultural background					
23	Intention of either parent to relocate residence of child					
24	Age, character and stability of parents					



		Florida West's F.S.A. §61.13	Georgia Code, 19-9-1	Hawaii HRS §571-46	Idaho I.C. §32-717	Illinois 750 ILCS 5/602
25	Respective home environments offered by parents					
26	Education and medical needs of child		• Excludes medical needs			
27	Happiness and welfare of child					
28	Whether present or past living conditions adversely affect child					
29	Determination of parent that has had continuity of care prior to separation					
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare					
31	Employment of parent and responsibilities of that employment					
32	Causes for dissolution of the marriage or legal separation		•			
33	Potential disruption of the child's social and school life					
34	Sincerity of each parents' request					
35	Parents' ability to financially support a custody arrangement					
36	Parent's respect for other parents' rights and responsibilities including right to privacy					
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future					

		Florida West's F.S.A. §61.13	Georgia Code, 19-9-1	Hawaii HRS §571-46	Idaho I.C. §32-717	Illinois 750 ILCS 5/602
38	Availability of public or private childcare services					
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party					
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child	•				
41	Criminal conviction					
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child					
44	Number of children					
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor					
46	Effect on child if one parent has sole authority over the child's upbringing					
47	Personal associations					
48	Lifestyle/sexual relationship					
49	Credibility, conduct and stability of parents					

		Indiana IC 31-14-13-2	Iowa I.C.A. § 598.41	Kansas KS ST §16-1610	Kentucky KRS §403.270
1	Physical, emotional, mental, religious and social needs of the child		• Emotional and mental needs only		
2	Capability and desire of each parent to meet those needs				
3	Wishes of child	•	•	•	•
4	Love and affection existing between child and each parent				
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity			•	
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent		• Whether one parent has denied other parent access to child	•	
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•	•	•	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child				
9	Other factors that the Court considers pertinent				
10	Wishes of child's parent or parents as to custody	•		•	•
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests	•		•	•
12	The child's adjustment to home, school and community	•		•	•

		Indiana IC 31-14-13-2	Iowa I.C.A. § 598.41	Kansas KS ST §16-1610	Kentucky KRS §403.270
13	Mental and physical health of all individuals involved	•			•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian	•		•	•
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody				
16	Past and present compliance by both parents with their rights and responsibilities to their child				
17	Age and capacity of child	•	•		
18	Gender of child	•			
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials				
20	The permanence, as a family unit, of the existing or proposed custodial home or homes				
21	Moral fitness of each parent, insofar as it affects the welfare of the child				
22	Child's cultural background				
23	Intention of either parent to relocate residence of child				
24	Age, character and stability of parents				
25	Respective home environments offered by parents		• Proximity of parties' homes		
26	Education and medical needs of child				
27	Happiness and welfare of child				

		Indiana IC 31-14-13-2	Iowa I.C.A. § 598.41	Kansas KS ST §16-1610	Kentucky KRS §403.270
28	Whether present or past living conditions adversely affect child				
29	Determination of parent that has had continuity of care prior to separation		•		
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare				
31	Employment of parent and responsibilities of that employment				
32	Causes for dissolution of the marriage or legal separation				
33	Potential disruption of the child's social and school life				
34	Sincerity of each parents' request				
35	Parents' ability to financially support a custody arrangement				
36	Parent's respect for other parents' rights and responsibilities including right to privacy				
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future				
38	Availability of public or private childcare services				
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party		•		
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child				

		Indiana IC 31-14-13-2	Iowa I.C.A. § 598.41	Kansas KS ST §16-1610	Kentucky KRS §403.270
41	Criminal conviction				
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development				
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child				
44	Number of children				
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor				
46	Effect on child if one parent has sole authority over the child's upbringing				
47	Personal associations				
48	Lifestyle/sexual relationship				
49	Credibility, conduct and stability of parents				

		Louisiana LSA- C.C.Art. 134	Maine ME ST T 19-A §1653	Maryland MD Code, Family Law §5-203	Massachusetts M.G.L.A. 208 §31	Michigan M.C.L.A. 722.23
1	Physical, emotional, mental, religious and social needs of the child		• Physical and mental only		• Social and religious needs not included	• Religion only
2	Capability and desire of each parent to meet those needs					•
3	Wishes of child	•	•			•
4	Love and affection existing between child and each parent	•	• And Guidance			•
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity	•	•			•
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•	•			•
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents		•		•	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child				•	
9	Other factors that the Court considers pertinent					•
10	Wishes of child's parent or parents as to custody					
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests		•			

		Louisiana LSA- C.C.Art. 134	Maine ME ST T 19-A §1653	Maryland MD Code, Family Law §5-203	Massachusetts M.G.L.A. 208 §31	Michigan M.C.L.A. 722.23
12	The child's adjustment to home, school and community	•	•			•
13	Mental and physical health of all individuals involved	•				•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian	•				
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody					
16	Past and present compliance by both parents with their rights and responsibilities to their child					
17	Age and capacity of child	•	•			•
18	Gender of child					
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials	•				•
20	The permanence, as a family unit, of the existing or proposed custodial home or homes	•				•
21	Moral fitness of each parent, insofar as it affects the welfare of the child	•				•
22	Child's cultural background					
23	Intention of either parent to relocate residence of child					
24	Age, character and stability of parents					
25	Respective home environments offered by parents	• Proximity of parties' homes	• Stability and adequacy of these environments			



		Louisiana LSA- C.C.Art. 134	Maine ME ST T 19-A §1653	Maryland MD Code, Family Law §5-203	Massachusetts M.G.L.A. 208 §31	Michigan M.C.L.A. 722.23
26	Education and medical needs of child	• Education and rearing			•	•
27	Happiness and welfare of child				•	
28	Whether present or past living conditions adversely affect child				•	
29	Determination of parent that has had continuity of care prior to separation					
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare					
31	Employment of parent and responsibilities of that employment					
32	Causes for dissolution of the marriage or legal separation					
33	Potential disruption of the child's social and school life					
34	Sincerity of each parents' request					
35	Parents' ability to financially support a custody arrangement					
36	Parent's respect for other parents' rights and responsibilities including right to privacy					
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future					
38	Availability of public or private childcare services					

		Louisiana LSA- C.C.Art. 134	Maine ME ST T 19-A §1653	Maryland MD Code, Family Law §5-203	Massachusetts M.G.L.A. 208 §31	Michigan M.C.L.A. 722.23
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party		•		•	
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child					
41	Criminal conviction					
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child					
44	Number of children					
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor					
46	Effect on child if one parent has sole authority over the child's upbringing		•			
47	Personal associations					
48	Lifestyle/sexual relationship					
49	Credibility, conduct and stability of parents					

		Minnesota M.S.A. §518.17	Mississippi Miss.Code Ann. §93-5-24	Missouri V.A.M.S. 452.375	Montana MT ST 40-4-212
1	Physical, emotional, mental, religious and social needs of the child	• Excluding social			• Developmental needs
2	Capability and desire of each parent to meet those needs	•			
3	Wishes of child	•	•	•	•
4	Love and affection existing between child and each parent	•	•		
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity	•	•		•
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•		•	•
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•		•	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child				•
9	Other factors that the Court considers pertinent		•	•	
10	Wishes of child's parent or parents as to custody	•		•	•
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests	•		•	•

		Minnesota M.S.A. §518.17	Mississippi Miss.Code Ann. §93-5-24	Missouri V.A.M.S. 452.375	Montana MT ST 40-4-212
12	The child's adjustment to home, school and community	•	•	•	•
13	Mental and physical health of all individuals involved	•	• Of parents and children	•	•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian	•			
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody				
16	Past and present compliance by both parents with their rights and responsibilities to their child				
17	Age and capacity of child	•	•		
18	Gender of child		•		
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials				
20	The permanence, as a family unit, of the existing or proposed custodial home or homes	•			
21	Moral fitness of each parent, insofar as it affects the welfare of the child		•		
22	Child's cultural background	•			
23	Intention of either parent to relocate residence of child			•	
24	Age, character and stability of parents		• Age and stability only		

		Minnesota M.S.A. §518.17	Mississippi Miss. Code Ann. §93-5-24	Missouri V.A.M.S. 452.375	Montana MT ST 40-4-212
25	Respective home environments offered by parents				
26	Education and medical needs of child	• Education only			
27	Happiness and welfare of child				
28	Whether present or past living conditions adversely affect child				
29	Determination of parent that has had continuity of care prior to separation		•		
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare		•		
31	Employment of parent and responsibilities of that employment		•		
32	Causes for dissolution of the marriage or legal separation				
33	Potential disruption of the child's social and school life				
34	Sincerity of each parents' request				
35	Parents' ability to financially support a custody arrangement				
36	Parent's respect for other parents' rights and responsibilities including right to privacy				
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future				

		Minnesota M.S.A. §518.17	Mississippi Miss. Code Ann. §93-5-24	Missouri V.A.M.S. 452.375	Montana MT ST 40-4-212
38	Availability of public or private childcare services				
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party				
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child				
41	Criminal conviction			•	
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development				
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child				
44	Number of children				
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor				• Failure to pay birth related costs
46	Effect on child if one parent has sole authority over the child's upbringing			•	
47	Personal associations				
48	Lifestyle/sexual relationship				
49	Credibility, conduct and stability of parents				

		Nebraska NE ST §42-364	Nevada N.R.S. 125.480	New Hampshire NH ST § 458:17	New Jersey ST 9:2-4	New Mexico NM ST § 40-4-9
1	Physical, emotional, mental, religious and social needs of the child				• Needs not itemized	
2	Capability and desire of each parent to meet those needs					
3	Wishes of child	•	•	•	•	•
4	Love and affection existing between child and each parent	•				
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity				•	
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent		•		• Whether one parent denied other parent visitation or access to child	
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•	•	•	•	
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child					
9	Other factors that the Court considers pertinent					
10	Wishes of child's parent or parents as to custody				•	•

		Nebraska NE ST §42-364	Nevada N.R.S. 125.480	New Hampshire NH ST § 458:17	New Jersey ST 9:2-4	New Mexico NM ST § 40-4-9
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests				•	•
12	The child's adjustment to home, school and community					•
13	Mental and physical health of all individuals involved	• General health and welfare of child				•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian					
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody					
16	Past and present compliance by both parents with their rights and responsibilities to their child					
17	Age and capacity of child	•	•	•	•	
18	Gender of child					
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials					
20	The permanence, as a family unit, of the existing or proposed custodial home or homes					



		Nebraska NE ST §42-364 • Social Behavior of child	Nevada N.R.S. 125.480	New Hampshire NH ST § 458:17	New Jersey ST 9:2-4	New Mexico NM ST § 40-4-9
33	Potential disruption of the child's social and school life					
34	Sincerity of each parents' request					
35	Parents' ability to financially support a custody arrangement					
36	Parent's respect for other parents' rights and responsibilities including right to privacy					
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future					
38	Availability of public or private childcare services					
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party		•	• Whether one party has interfered with other parties access to child	•	
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child					
41	Criminal conviction					
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					

		Nebraska NE ST §42-364	Nevada N.R.S. 125.480	New Hampshire NH ST § 458:17	New Jersey ST 9:2-4	New Mexico NM ST § 40-4-9
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child					
44	Number of children				•	
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor					
46	Effect on child if one parent has sole authority over the child's upbringing					
47	Personal associations					
48	Lifestyle/sexual relationship					
49	Credibility, conduct and stability of parents					

		New York NY Dom Rel §240	North Carolina N.C.G.S.A. § 50-13.2	North Dakota NDCC 14-09-06.2	Ohio OH ST §3109.04	Oklahoma 43 OKL.ST. Ann. §112, §109 10 OKL.ST. Ann. §21.1
1	Physical, emotional, mental, religious and social needs of the child	• Religion Only				
2	Capability and desire of each parent to meet those needs					
3	Wishes of child	•		•	• If Judge interviewed child	•
4	Love and affection existing between child and each parent			• And guidance		
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity			•		•
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•			• Whether one parent has unreasonably denied the other parent access to the child or visitation	•
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•	•	•	•	•

		New York NY Dom Rel §240	North Carolina N.C.G.S.A. § 50-13.2	North Dakota NDCC 14-09-06.2	Ohio OH ST §3109.04	Oklahoma 43 OKL.ST.Ann. §112, §109 10 OKL.ST.Ann. §21.1
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child	•				
9	Other factors that the Court considers pertinent			•		
10	Wishes of child's parent or parents as to custody	•			•	
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests			•	•	
12	The child's adjustment to home, school and community			•	•	
13	Mental and physical health of all individuals involved	• Mental health of parents		•	•	
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian					
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody					

		New York NY Dom Rel §240	North Carolina N.C.G.S.A. § 50-13.2	North Dakota NDCC 14-09-06.2	Ohio OH ST §3109.04	Oklahoma 43 OKL.ST.Ann. §112, §109 10 OKL.ST.Ann. §21.1
16	Past and present compliance by both parents with their rights and responsibilities to their child	•				
17	Age and capacity of child	•		•		•
18	Gender of child	•				
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials			•		
20	The permanence, as a family unit, of the existing or proposed custodial home or homes			•		
21	Moral fitness of each parent, insofar as it affects the welfare of the child	•		•		
22	Child's cultural background					
23	Intention of either parent to relocate residence of child				•	
24	Age, character and stability of parents					
25	Respective home environments offered by parents					
26	Education and medical needs of child					•
27	Happiness and welfare of child					

		New York NY Dom Rel §240	North Carolina N.C.G.S.A. § 50-13.2	North Dakota NDCC 14-09-06.2	Ohio OH ST §3109.04	Oklahoma 43 OKL.ST. Ann. §112, §109 10 OKL.ST. Ann. §21.1
28	Whether present or past living conditions adversely affect child					
29	Determination of parent that has had continuity of care prior to separation					
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare	• Ability to care for child				
31	Employment of parent and responsibilities of that employment	• Professional achievements				
32	Causes for dissolution of the marriage or legal separation					
33	Potential disruption of the child's social and school life					
34	Sincerity of each parents' request					
35	Parents' ability to financially support a custody arrangement	•				
36	Parent's respect for other parents' rights and responsibilities including right to privacy					

		New York NY Dom Rel §240	North Carolina N.C.G.S.A. § 50-13.2	North Dakota NDCC 14-09-06.2	Ohio OH ST §3109.04	Oklahoma 43 OKL.ST.Ann. §112, §109 10 OKL.ST.Ann. §21.1
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future					
38	Availability of public or private childcare services					
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party					
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child			•		
41	Criminal conviction				•	
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					

		Oregon O.R.S. § 107.137	Pennsylvania 23 Pa. C.S.A. § 5303	Rhode Island RI ST §15-5-16	So. Carolina SC ST § 20-7-1515	So. Dakota SD ST § 25-5-7.1 SDCL §25-4-45
21	Moral fitness of each parent, insofar as it affects the welfare of the child					
22	Child's cultural background					
23	Intention of either parent to relocate residence of child					
24	Age, character and stability of parents					
25	Respective home environments offered by parents					
26	Education and medical needs of child					
27	Happiness and welfare of child					
28	Whether present or past living conditions adversely affect child					
29	Determination of parent that has had continuity of care prior to separation	•				
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare					
31	Employment of parent and responsibilities of that employment					
32	Causes for dissolution of the marriage or legal separation					
33	Potential disruption of the child's social and school life					
34	Sincerity of each parents' request					



		Oregon O.R.S. § 107.137	Pennsylvania 23 Pa. C.S.A. § 5303	Rhode Island RI ST §15-5-16	So. Carolina SC ST § 20-7-1515	So. Dakota SD ST § 25-5-7.1 SDCL §25-4-45
35	Parents' ability to financially support a custody arrangement					
36	Parent's respect for other parents' rights and responsibilities including right to privacy					
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future					
38	Availability of public or private childcare services					
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party					
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child					
41	Criminal conviction		•			
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child					

		Oregon O.R.S. § 107.137	Pennsylvania 23 Pa. C.S.A. § 5303	Rhode Island RI ST §15-5-16	So. Carolina SC ST § 20-7-1515	So. Dakota SD ST § 25-5-7.1 SDCL §25-4-45
44	Number of children					
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor					
46	Effect on child if one parent has sole authority over the child's upbringing					
47	Personal associations					
48	Lifestyle/sexual relationship					
49	Credibility, conduct and stability of parents					

		Tennessee T.C.A. §36-6-106	Texas V.T.C.A., Family Code § 263.307	Utah U.C.A. 1953§30-3-10	Vermont 15 V.S.A. §665
1	Physical, emotional, mental, religious and social needs of the child				
2	Capability and desire of each parent to meet those needs				•
3	Wishes of child	•		•	
4	Love and affection existing between child and each parent	•			•
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity	•			
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•		•	•
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•	•		•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child				
9	Other factors that the Court considers pertinent				
10	Wishes of child's parent or parents as to custody			•	
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests	•			•
12	The child's adjustment to home, school and community	•			•

		Tennessee T.C.A. §36-6-106	Texas V.T.C.A., Family Code § 263.307	Utah U.C.A. 1953§30-3-10	Vermont 15 V.S.A. §665
13	Mental and physical health of all individuals involved	•			
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian	•			
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody				
16	Past and present compliance by both parents with their rights and responsibilities to their child	•		•	
17	Age and capacity of child	•			
18	Gender of child				
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials	•			•
20	The permanence, as a family unit, of the existing or proposed custodial home or homes	•			
21	Moral fitness of each parent, insofar as it affects the welfare of the child			•	
22	Child's cultural background				
23	Intention of either parent to relocate residence of child				
24	Age, character and stability of parents				
25	Respective home environments offered by parents				
26	Education and medical needs of child				

		Tennessee T.C.A. §36-6-106	Texas V.T.C.A., Family Code § 263.307	Utah U.C.A. 1953§30-3-10	Vermont 15 V.S.A. §665
27	Happiness and welfare of child				
28	Whether present or past living conditions adversely affect child				
29	Determination of parent that has had continuity of care prior to separation				
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare				
31	Employment of parent and responsibilities of that employment				
32	'Causes for dissolution of the marriage or legal separation				
33	Potential disruption of the child's social and school life				
34	Sincerity of each parents' request				
35	Parents' ability to financially support a custody arrangement				
36	Parent's respect for other parents' rights and responsibilities including right to privacy				
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future				
38	Availability of public or private childcare services				

		Tennessee T.C.A. §36-6-106	Texas V.T.C.A., Family Code § 263.307	Utah U.C.A. 1953§30-3-10	Vermont 15 V.S.A. §665
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party				•
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child				
41	Criminal conviction				
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development				•
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child				
44	Number of children				
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor				
46	Effect on child if one parent has sole authority over the child's upbringing				
47	Personal associations				
48	Lifestyle/sexual relationship				
49	Credibility, conduct and stability of parents				

		Virginia VA ST §20-124.3	Washington WA ST § 26.09	Washington, DC D.C. Code 1981 §16-911	West Virginia WV ST §48-11	Wisconsin W.S.A. 767.24
1	Physical, emotional, mental, religious and social needs of the child	• Excluding religious and moral; including developmental and intellectual needs	• Emotional need and developmental level		• And developmental	
2	Capability and desire of each parent to meet those needs				•	
3	Wishes of child	•		•	•	•
4	Love and affection existing between child and each parent	•	• Including strength, nature and stability of that relationship	•	•	
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity					
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	• As well as whether one parent has unreasonably denied the other parent access to the child or visitation		•	• And whether one parent has denied other parent access to child	• And whether one party is likely to interfere with child's relationship with other party

		Virginia VA ST §20-124.3	Washington WA ST § 26.09	Washington, DC D.C. Code 1981 §16-911	West Virginia WV ST §48-11	Wisconsin W.S.A. 767.24
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•		•	•	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child				•	•
9	Other factors that the Court considers pertinent	•				•
10	Wishes of child's parent or parents as to custody		•	•		•
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests	•	•	•		•
12	The child's adjustment to home, school and community			•		•
13	Mental and physical health of all individuals involved	• Of parents		•		•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian		•	•		
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody					



		Virginia VA ST §20-124.3	Washington WA ST § 26.09	Washington, DC D.C. Code 1981 §16-911	West Virginia WV ST §48-11	Wisconsin W.S.A. 767.24
16	Past and present compliance by both parents with their rights and responsibilities to their child	•				
17	Age and capacity of child	•		•	•	•
18	Gender of child					
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials					
20	The permanence, as a family unit, of the existing or proposed custodial home or homes					
21	Moral fitness of each parent, insofar as it affects the welfare of the child					
22	Child's cultural background					
23	Intention of either parent to relocate residence of child					
24	Age, character and stability of parents	• Age of parents				
25	Respective home environments offered by parents		• Proximity of parents' homes	• Proximity of parents' homes	• Proximity of parents' homes	
26	Education and medical needs of child					• Education and developmental
27	Happiness and welfare of child					

		Virginia VA ST §20-124.3	Washington WA ST § 26.09	Washington, DC D.C. Code 1981 §16-911	West Virginia WV ST §48-11	Wisconsin W.S.A. 767.24
28	Whether present or past living conditions adversely affect child			•		
29	Determination of parent that has had continuity of care prior to separation				•	
30	Which party has best parenting skills and which has willingness and capacity to provide primary childcare		•			
31	Employment of parent and responsibilities of that employment		•	•		
32	Causes for dissolution of the marriage or legal separation					
33	Potential disruption of the child's social and school life			•		
34	Sincerity of each parents' request			•		
35	Parents' ability to financially support a custody arrangement			•		
36	Parent's respect for other parents' rights and responsibilities including right to privacy					
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future			•	• Past performance of caretaking functions	•
38	Availability of public or private childcare services					•

		Virginia VA ST §20-124.3	Washington WA ST § 26.09	Washington, DC D.C. Code 1981 §16-911	West Virginia WV ST §48-11	Wisconsin W.S.A. 767.24
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party	•	•	•	•	•
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child				•	
41	Criminal conviction					
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development					
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child	•		•		
44	Number of children			•	• Keeping siblings together	
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor					
46	Effect on child if one parent has sole authority over the child's upbringing					
47	Personal associations					

		Virginia VA ST §20-124.3	Washington WA ST § 26.09	Washington, DC D.C. Code 1981 §16-911	West Virginia WV ST §48-11	Wisconsin W.S.A. 767.24
48	Lifestyle/sexual relationship					
49	Credibility, conduct and stability of parents					

		Wyoming WY ST § 20-2-201
1	Physical, emotional, mental, religious and social needs of the child	
2	Capability and desire of each parent to meet those needs	
3	Wishes of child	
4	Love and affection existing between child and each parent	•
5	Length of time child has lived in a stable, satisfactory environment and the desirability of maintaining continuity	
6	Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent	•
7	Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents	•
8	Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical wellbeing of the child	
9	Other factors that the Court considers pertinent	
10	Wishes of child's parent or parents as to custody	•
11	Interaction and inter-relationship of the child with child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests	• Child and parent and how interaction may be improved

		Wyoming WY ST § 20-2-201
12	The child's adjustment to home, school and community	
13	Mental and physical health of all individuals involved	•
14	If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian	• Of parents
15	Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody	
16	Past and present compliance by both parents with their rights and responsibilities to their child	
17	Age and capacity of child	
18	Gender of child	
19	Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials	
20	The permanence, as a family unit, of the existing or proposed custodial home or homes	
21	Moral fitness of each parent, insofar as it affects the welfare of the child	• Including competency
22	Child's cultural background	
23	Intention of either parent to relocate residence of child	
24	Age, character and stability of parents	

		Wyoming WY ST § 20-2-201
37	Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future	
38	Availability of public or private childcare services	
39	Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party	
40	The making of false allegations not made in good faith, by one parent against the other, of harm to a child	
41	Criminal conviction	
42	Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development	
43	Willingness and ability of each parent to maintain a close and continuing relationship with the child	
44	Number of children	
45	Whether either parent has failed to make all child support payments, including arrearages, that are required of that parent pursuant to a Child Support Order under which that parent is the obligor	

**EXHIBIT C**



1. Needs of the Child, Considering Health, Physical, Emotional, Social, Religious, Mental and Educational Needs

**Physical, emotional, mental, religious, and social needs of the child**  
19 STATES

**Education and medical needs of child**  
9 STATES

**Happiness and welfare of child**  
1 STATE

**Potential disruption of the child's social and school life**  
2 STATES

2. Child's Preference, Considering Age, Capacity and Gender

**Wishes of child**  
40 STATES

**Age and capacity of the child**  
28 STATES

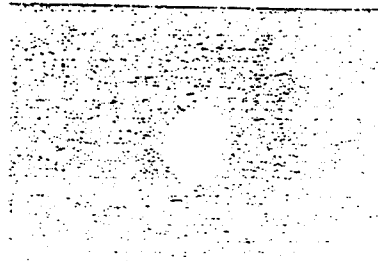
**Gender of child**  
4 STATES

3. Stronger, Healthier Psychological Bond Between All Parties Involved

**Love and affection existing between the child and each parent**  
19 STATES

**Interaction and inter-relationship of the child with child's parent(s), the child's Siblings and any other person who may significantly affect the child's best interests**  
23 STATES

**Quality of child's relationship with the primary care provider, if appropriate, given the child's age and development**  
1 STATE



4. Parenting Capacity and Desire

Capability and desire of each parent to meet child's needs  
7 STATES

Wishes of child's parent or parents as to custody  
22 STATES

Sincerity of each parent's request  
1 STATE

Parents' ability to financially support a custody arrangement  
2 STATES

Willingness and ability of each parent to maintain a close and continuing relationship with the child  
2 STATES

5. Commitment to Providing a Child with Food, Clothing and Shelter

The child's adjustment to home, school and community  
23 STATES

Capacity and disposition of each parent to provide the child with food, clothing, medical care and other materials  
6 STATES

6. Past, Present and Future Home Environments Provided by Parties

Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity  
14 STATES

Respective home environments offered by parents  
10 STATES

Whether present or past living conditions adversely affect child  
3 STATES

The permanence, as a family unit, of the existing or proposed custodial home or homes  
6 STATES

Intention of either parent to relocate residence of the child  
2 STATES

7. Past, Present and Future Availability of Parents

**If one parent, both parents or neither parent has provided primary care of the child or extent cared for by de facto custodian**  
10 STATES

**Past and present compliance by both parents with their rights and responsibilities to their child**  
5 STATES

**Amount and quality of time each parent has spent with the child in the past, any necessary changes to the parent's custodial roles and any reasonable lifestyle changes that a parent proposes to make to be able to spend time with the child in the future.**  
3 STATES

**Number of children**  
4 STATES

**Determination of parent that has had continuity of care prior to separation**  
6 STATES

**Which parent has best parenting skills and which has willingness and capacity to provide primary childcare**  
4 STATES

**Employment of parents and responsibilities of that employment**  
5 STATES

**Availability of public or private childcare services**  
1 STATE

8. Appreciation of the Role of the Other Parent in the Child's Upbringing

**Desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent**  
29 STATES

**Parent's respect for other parent's rights and responsibilities including the right to privacy**  
1 STATE

**Effect on child if one parent has sole authority over the child's upbringing**  
2 STATES

9. Cooperation & Communication

**Cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party**

12 STATES

**Whether either parent has failed to make all child support payments, including arrearages, that are required of that party pursuant to a child support Order under which that parent is the obligor**

3 STATES

**Credibility, conduct and stability of parents**

1 STATE

**Nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody**

1 STATE

**Personal associations**

1 STATE

**The making of false allegations not made in good faith, by one parent against the other, of harm to a child**

3 STATES

10. Physical & Psychological Health of Each Parent, Considering Dangers of Either Parent, Including History of Domestic Violence and Substance Abuses

**Any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents**

41 STATES

**Evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child**

**Mental and physical health of all individuals involved**

25 STATES

**Criminal conviction**

3 STATES

11. Values and Morality

**Moral fitness of each parent, insofar as it affects the welfare of the child**

**9 STATES**

**Child's cultural background**

**1 STATE**

**Age, character and stability of parents**

**3 STATES**

**Causes for dissolution of the marriage or legal separation**

**2 STATES**

**Lifestyle/sexual relationship**

**1 STATE**

**EXHIBIT D**

Board of Psychological Examiners  
Division of Consumer Affairs  
NJ Department of Law & Public Safety  
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*[Handwritten signature]*

*Praer*



## Specialty Guidelines for Psychologists Custody/Visitation Evaluations

**LEPS**

New Jersey Department of Law & Public Safety

**CONSUMER  
AFFAIRS**

*D*

## INTRODUCTION

These guidelines are designed to recognize responsible standards for work of psychologists in custody/visitation evaluations.

The New Jersey State Board of Psychological Examiners wishes to express its appreciation to the committee members who contributed to this document.

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# Guidelines

## 1. RESPONSIBILITY

A. Psychologists provide comprehensive, objective, and impartial custody/visitation evaluations in order to provide information to the court or to attorneys which assists in making decisions as to custody/visitation arrangements that will best provide for the needs of the minor child(ren) involved.

B. Psychologists understand that their client is considered to be the child(ren) and their evaluations are conducted in compliance with the legal standard of the best interests of the child. Psychologists comply with this standard regardless of the specific contractual relationship under which they are providing services.

C. Psychologists maintain scientific objectivity and avoid bias by making every reasonable effort to collect data from all relevant sources regardless of the specific party(ies) requesting services from the psychologist.

D. Psychologists' responsibility encompasses their own conduct and the conduct of those whom they directly supervise.

E. Psychologists conducting a custody and visitation evaluation make a reasonable effort to ensure that their services and the products of their services will be used in a forthright and responsible manner.

F. Psychologists are aware of their responsibility for the welfare of the families they evaluate.

## Commentary

### 1. RESPONSIBILITY

B. Due to the potential problems posed by the adversarial process, and in order to avoid bias or the appearance of bias, psychologists carefully consider the nature of the contractual agreement when they agree to conduct a custody/visitation evaluation.

1. Most Preferred Practice: Psychologists make a reasonable effort to secure a court appointment by the judge. If the judge does not contact the psychologist, the psychologist can request the contacting attorneys or clients to attempt to arrange a court appointment.

2. Preferred Practice: If a court appointment is not obtained, psychologists make a reasonable effort to be jointly selected by the attorneys representing the parties in the case.

3. Acceptable Practice: If not court-appointed or selected by all attorneys, psychologists participate in a custody determination on behalf of one adversary,

while maintaining their obligation to serve the best interest of the child.

D. Psychologists recognize the obligation to train office staff who have contact with clients in a custody evaluation to understand and administer all policies and procedures, be able and willing to answer all administrative questions, and be able to schedule appointments. If such training is not feasible, psychologists recognize the obligation to instruct office staff to refer all calls to the psychologist who deals with them directly.

F. Psychologists use discretion in undertaking the evaluation of a family which has already been evaluated. Multiple evaluations, particularly of children, can be sources of stress. Psychologists seek to minimize unnecessary stress by using alternative procedures when appropriate. Psychologists asked for a second opinion use their professional judgment and may, in appropriate circumstances, select such procedures as case record review rather than re-examining the child(ren) or family.

## Guidelines

### 2. COMPETENCE

A. Psychologists who provide custody evaluation information to the court must be licensed. Permit holders may not be utilized as evaluators in custody cases.

B. Psychologists who provide custody evaluations to the legal system have a level of general expertise in the following areas: child growth and development; parent-child bonding; scope of parenting; adult development and psychopathology; family functioning.

C. Psychologists recognize that allegations of acts of abuse by either parent or allegations of impairment of either parent require specialized knowledge and assessment skills above and beyond the general expertise required in custody evaluations. If the allegations involved fall outside the area of expertise of the psychologist, the psychologist recognizes the obligation to obtain the necessary training and/or supervision in this area or to decline to perform the evaluation. Allegations involving the following areas require additional education or training, knowledge, and experience: physical, sexual, or psychological abuse of spouse or children; neglect of children; alcohol or substance abuse which impairs the ability to parent; medical/physical/neurological impairment of either spouse's caretaking ability. Any and all such allegations should be taken seriously and evaluated independently

regardless of the source or circumstances in which they arise.

D. Psychologists recognize the need to maintain scientific objectivity and to resist allowing personal values and beliefs to influence the evaluation. They identify the problems to which a child is exposed as a product of lifestyles and/or values which are different from those of the psychologist or from the dominant culture related to ethnicity, race, religion, socioeconomic status, or sexual orientation. Psychologists recognize the obligation to acquire specific current scientific knowledge regarding diverse populations, especially as it relates to child-rearing issues.

#### E. Testing Expertise

Psychologists employ only those test procedures which they are competent to administer and the construction/interpretation of which they understand.

#### F. Legal Knowledge

1. Psychologists conducting custody and visitation evaluations possess a reasonable level of knowledge and understanding of the legal standards which govern their participation as experts.

2. Psychologists conducting custody and visitation evaluations possess a reasonable level of knowledge and understanding of the legal standards governing decisions regarding custody and visitation.

3. Psychologists conducting custody and visitation evaluations remain subject to all laws governing psychologists in their work. This is true even if the psychologist is court-appointed.

#### G. Consultation

Psychologists recognize the need to seek consultation as appropriate to ensure that their work meets professional standards of service.

## Commentary

### 2. COMPETENCE

#### B. General expertise

1. Knowledge of child growth and development. Psychologists possess current scientific knowledge and assessment skills pertaining to cognitive, personality, social, physical and skill development. Psychologists are competent to identify developmental dysfunction.

2. Knowledge of parent-child bonding. Psychologists possess current scientific knowledge and assessment skills pertaining to attachment processes. Psychologists possess knowledge and assessment skills regarding the quality of bonding, effects of disrupted

attachments/separations, rebonding, changes in bonding, and the relationship of the child's sense of time to separation issues.

3. Knowledge of the scope of parenting. Psychologists possess current scientific knowledge and assessment skills pertaining to the extent of parent involvement, parental capacity to provide for the child's physical needs (food, clothing, shelter, safety, health) and psychological needs (general welfare/happiness, love, security, affection, valuing the child, attunement/responsiveness, moral development, individuation, autonomy/independence, intellectual stimulation/academic support, peer/family socialization).

4. Knowledge of adult development and psychopathology. Psychologists possess current scientific knowledge and assessment skills pertaining to parents' intellect, personality, and emotional dysfunction. Psychologists assess only those functions which relate directly to the capacity to parent.

5. Knowledge of family functioning. Psychologists possess current scientific knowledge and assessment skills pertaining to family systems/alliances, and availability and appropriateness of social support systems available to each parent.

#### C. Expertise Related to Allegations of Abuse or Impairment

1. Psychologists conducting evaluations in which allegations of domestic violence or child abuse arise possess current scientific knowledge and assessment skills pertaining to the nature, types, and psychological sequelae of domestic violence and of child abuse. Current scientific knowledge about victimization, trauma responses, and special syndromes pertaining to these areas is particularly helpful.

Psychologists recognize that psychological and legal issues often combine to produce denials of the extent or impact of allegations regarding many of these special issues by the alleged perpetrators. Psychologists recognize that many of these allegations involve incidents occurring only in private. In addition, abuse within a family suggests the presence of intimidation which can affect the results of the custody evaluation, especially in, but not limited to, such areas as: the child's stated custodial preference, the personality and functioning of the alleged assailant and victim, and the nature of appropriate visitation arrangements. Therefore, psychologists recognize that specialized assessment techniques may be necessary.

2. Psychologists recognize the obligation to evaluate thoroughly all allegations which call into ques-

tion the safety of each child in each home. A child is unsafe if he/she is subject to abuse, neglect, unsafe conditions, and/or is a witness to the abuse of others. Psychologists recognize the fact that allegations of domestic violence, child abuse and neglect, alcohol and substance abuse, and impairment made after a separation should not result in disregarding such allegations simply as retaliatory. Further, it must be recognized that such allegations are, on occasion, made by an accused abuser to retaliate against the accuser. Psychologists recognize the need to evaluate the motives of all parties making abuse allegations.

Psychologists recognize that, even after a thorough evaluation, unanswered questions regarding allegations of abuse may remain. Psychologists recognize that under these circumstances they are obligated to advise the court as to the continuing uncertainty.

D. Psychologists do not allow their own values and opinions concerning child-rearing to contaminate their clinical evaluations. Psychologists draw conclusions only on the basis of what can be legitimately inferred from evaluation data and on the basis of what is known in the scientific literature.

#### E. Testing Expertise

Psychologists do not rely solely upon the results of computerized narrative reports of assessment devices without exercising an independent capacity to interpret scores yielded by the measure. Psychologists should not rely on formulae or recommendations contained in computerized narrative reports in a mechanical manner without incorporating them into an independently formulated clinical context, including diagnoses where applicable.

Further, psychologists recognize that there are currently a number of scales and other procedures on the market that purport to be able to identify the appropriate parent for placement of a child in divorce/custody disputes. Psychologists do not rely on conclusions generated or suggested by these instruments without assessing them against their own independent findings based upon other sources of data. Psychologists recognize that the ultimate responsibility for interpreting the meaning of test results and their relevance to parental capacity rests with the psychologist and not with the formulators of the computerized narrative report or custody assessment procedure, regardless of how authoritative the output of such instruments may appear.

## F. Legal Knowledge

(See Appendix for status of rules, statutes, and case law as of 1993.)

1. Two roles are possible for a psychologist conducting a custody/visitation evaluation: assistant to the fact-finder or expert witness. As assistant to the fact-finder, the psychologist gathers data not otherwise available to the court and relates the data to the questions presented in the custody issue(s). As expert witness, the psychologist interprets evidence already presented, relating that interpretation to the questions at issue.

2. Psychologists notify the Division of Youth and Family Services when a suspicion of child abuse, physical or sexual, or neglect arises in the course of an evaluation. Similarly, psychologists remain subject to duty-to-warn obligations if an imminent danger exists to any identifiable person.

G. Psychologists recognize that referral to and/or consultation with other specialists is appropriate in cases where the diagnostic and/or clinical issues fall outside the scope of the psychologist's expertise. Such specialized areas include, but are not limited to: neuropsychology, medication management, physical disabilities, educational problems, medical problems.

## Guidelines

### 3. RELATIONSHIPS

#### A. Role of the Psychologist

The psychologist has an obligation to clarify with all parties, attorneys, and the court the nature of the contractual agreement and his/her role as an objective evaluator, irrespective of the contractual arrangement.

#### B. Dual Relationships

Under no circumstances should a treating psychologist agree to assume the role of evaluator. Under special circumstances, usually under a court order and with the consent of the client, a psychologist whose initial involvement with the case has been as an evaluator may agree to function subsequently as a therapist. If the psychologist/therapist is required to report back to the court, the nature of all arrangement and limitations on confidentiality must be explained to all parties.

#### C. Communication

All communication with parents or attorneys is conducted in such a manner as to avoid bias or other impropriety or the appearance thereof. A psychologist appointed by a court or designated jointly by the parties

assures that both parties are kept informed of significant written or verbal communication to them presented by either party or party's attorney.

## Commentary

### 3. RELATIONSHIPS

#### A. Role of the Psychologist

Psychologists inform the contracting attorney(s) that their role is to serve the best interest of the child(ren), regardless of who contracts for the services. Psychologists inform attorneys that no guarantees can be made to support his/her client's goals.

Psychologists obtain a copy of the court order, if there is one, prior to beginning the evaluation.

#### B. Dual Relationships

If the psychologist is now or has been a therapist for any member of the family, the psychologist does not assume the role of evaluator in a custody case. It is ordinarily a conflict of interest to become the therapist for any member of the family during or after completion of the evaluation.

Psychologists resist testifying in court in any custody case where they are or have been the therapist for any member of the family, except with the consent of that individual. If a subpoena to testify is issued by a judge, the psychologist avoids making recommendations regarding custody or visitation. Psychologists appointed as evaluators contact treating therapists, with client permission or court order, to obtain as much information as possible about the family in question.

#### C. Communication

Court-appointed psychologists avoid or strive to limit communication with attorneys unless mandated by the court. Communication from the psychologist to the attorney during the course of the evaluation is limited to the psychologist's request for information or notification of delay in the process. Any substantive communications from attorneys to the psychologist are in writing with notice given to the other party.

If selected by both attorneys without court appointment, psychologists communicate any substantive information to both attorneys simultaneously, either in writing or through a conference call. If retained by one party, psychologists restrict all communication to that party.

Psychologists recognize the obligation to use their discretion in providing feedback to anyone involved in the evaluation. Psychologists understand that feedback, when provided, should be shared with both parties.

## Guidelines

### 4. THE COURSE OF THE EVALUATION

#### A. Informed Consent

Psychologists recognize the obligation to explain thoroughly the purposes and procedures of the custody evaluation to the parties and/or their attorneys before beginning the evaluation. If court-appointed, and cooperation from the parties is not forthcoming, the psychologist should inform the court and seek resolution of the problem before proceeding.

#### B. Fees

1. Psychologists recognize the obligation to set fees in a manner which is consistent with (1) providing adequate compensation for the level of service needed to comply with professional standards and (2) to avoid financial exploitation of the client. Psychologists make a reasonable effort to provide continuity of service to cases which return under changed financial circumstances.

2. Psychologists make all parties involved fully aware of their fee arrangements.

3. Psychologists recognize that contingency fees are unethical, giving the appearance of bias and potentially jeopardizing the psychologist's neutrality.

4. Psychologists provide complete documentation for all fees, itemizing time, charges, and services as appropriate.

#### C. Scheduling Appointments

1. Psychologists recognize the need to conduct and complete a custody/visitation evaluation in a timely manner.

2. Psychologists recognize the obligation to balance contacts with parents in such a manner that impartiality is ensured and bias or the appearance of bias is avoided.

#### D. Delivery of the Evaluation/Report

The final report is delivered to the party(ies) who contracted with the psychologist. If the evaluation is conducted pursuant to a court order, the report is delivered to the court. If the evaluation has been conducted pursuant to attorney request, it should be delivered to the requesting attorney.

## Commentary

### 4. THE COURSE OF THE EVALUATION

#### A. Informed Consent

Psychologists recognize that their initial involvement in the case creates the parameters of the evalua-

tion. Psychologists enter the case in such a manner as to convey respect for the parties involved, interest and compassion for their situation and honesty in communication(s) with them. Psychologists are aware that the therapeutic effect of the evaluation experience upon the family can be profound, even though they are not playing the role of treating therapist.

It is advised that psychologists provide a set of written guidelines for the parents which will assist them in understanding the nature of the custody evaluation and the implications of their agreement to participate. These guidelines should include, but are not limited to, the purpose, procedures and methods, charges, limits of confidentiality, special policies pertaining to issues such as cancelled and/or missed appointments, and other relevant matters. Psychologists protect all involved parties by having attorneys review the guidelines, and by signing the guidelines and obtaining both parents' signatures.

#### B. Fees

1. Psychologists decline a case and make appropriate referrals if mutually satisfactory fee arrangements cannot be made in advance.

2. Psychologists accept payment of fees by retainer or by a pre-arranged fee schedule. Psychologists understand that retainer fees protect them from non-payment and they may decline a case if retainer arrangements cannot be made. If a partial retainer is accepted, psychologists clearly inform the judge, attorneys, and/or parties of the schedule for payment of the remainder and of the contingent relationship between complete payment and final delivery of services. Psychologists inform judges, attorneys and parties that payment in excess of the reasonable estimate is expected if delivery of services unforeseeably exceeds that anticipated. Psychologists inform judges, attorneys and parties that unused fees will be refunded as soon as possible upon completion of the evaluation.

If payment by fee schedule is accepted, psychologists provide a complete explanation of the expected per-visit payment or other scheduled costs. Psychologists may require payment for the report prior to its delivery.

Psychologists may bill the estimated amount for court testimony in advance of scheduled court appearances when possible. Psychologists can require payment for court testimony prior to the scheduled court appearance when possible. When prior payment is not feasible, psychologists may require payment in a form which protects the psychologists' fees such as cash.

certified check, money order, attorney's check or credit card.

#### C. Scheduling Appointments

1. Psychologists accept cases only when there is time in the psychologist's schedule to move through the process efficiently.

If neither parent has contacted the psychologist to begin the evaluation within thirty (30) days after the psychologist has received notification of court appointment, the psychologist notifies the court/attorneys in writing.

Psychologists understand that time frames must be adjustable to the complexity of the data collection process. Psychologists recognize the obligation to observe appropriate and realistic time guidelines to avoid undue prolongation of the process, and to notify the court/attorney(s) of any unusual or excessive delays. Psychologists recognize the obligation to schedule appointments with as much regularity as the case permits and in a sequence which the psychologist finds most helpful in gathering the data. Psychologists recognize the obligation to discuss problems in following the sequence directly with the parent(s) prior to notifying the court/attorney.

Psychologists recognize the obligation to complete the written report in a timely manner. Delays of more than one month from the final session are considered excessive unless there are extenuating circumstances.

2. The scheduling of contacts with each parent is dependent upon the content of the evaluation, and reflects the specific questions in the case and the time needed to obtain the necessary information. Therefore, while the scheduling of contacts with each parent does not automatically provide each parent with equal time, psychologists have a clear rationale for any significant disparities between the parties in time allocation.

#### D. Delivery of the Report

Psychologists who are court-appointed submit the report to the judge who signed the court order. Psychologists who are court-selected send the report to both attorneys. Psychologists who are employed by one attorney send the report to that attorney only.

## Guidelines

### 5. ASSESSMENT TECHNIQUES

A. Psychologists employ a range of assessment procedures, which may or may not include testing, adequate to reasonably address the specific referral

questions unique to each case. Assessment procedures should take into account all factors deemed significant to the welfare of the children. Excessive testing should be avoided.

B. Psychologists pay special attention to the reliability, validity, and general technical adequacy of the psychometric instruments they employ. Projective tests may be employed which are generally accepted by the psychological community. The use and limitations of any tests not generally accepted should be noted and justified in the circumstances.

C. Psychologists obtain all releases necessary for the collection of all relevant data in writing before proceeding with the evaluation.

D. The onus of demonstrating the adequacy and appropriateness of evaluation procedures which are not well recognized in the discipline rests on the psychologist.

E. When allegations of abuse or impairment arise, psychologists use special assessment techniques to address these questions.

## Commentary

### 5. ASSESSMENT TECHNIQUES

A. The procedures a psychologist uses include, but are not limited to:

1. direct observations of parents, child(ren), pertinent extended family members, and others critical to the case in individual, joint, and family modalities as indicated;

2. interviews of parents, child(ren), pertinent family members, and others in individual, joint, and family modalities as appropriate;

3. psychological testing of all appropriate parties, as indicated by the specific needs of the case, to assess the parties' intellectual ability, personality functioning, parenting ability, and special needs;

4. home visits;

5. special techniques including naturalistic observations which allow assessment of the functioning of the parent(s) beyond the home;

6. special techniques including naturalistic observations which allow assessment of the functioning of the child beyond the home, including school;

7. collection of collateral information from additional parties and/or professionals through multiple means including, but not limited to, direct interviews, review of reports and records, and consultation;

8. evaluations done by specializations within

B. Psychologists maintain active control over records and the release of information. Psychologists reveal only that information which is directly relevant to the issues before the court and only to those persons directly involved in the case.

C. A treating psychologist recognizes the obligation to obtain permission from the client or the client's guardian, or to obtain a court order before releasing any treatment records of clients involved in a custody determination.

## Commentary

### 6. CONFIDENTIALITY

A. Completion of custody/visitation evaluations and reports necessitates obtaining consent to release the psychologist from confidentiality and privilege. Information obtained during the evaluation is released because the psychologist undertakes (1) the responsibility to serve the best interests of the children by communicating all relevant data in a custody evaluation to the court and (2) the responsibility to maintain objectivity by obtaining relevant data from multiple sources and corroborating statements by discussing them with (an) other source(s). Therefore, psychologists explain these responsibilities to attorney(s) and clients in language which is understandable to the clients, at the beginning of the evaluation.

Psychologists understand that the need to disclose normally privileged information may interfere with the objectivity of the custody evaluation by inhibiting the free and complete disclosure of information.

Psychologists understand that such inhibitions may arise from personal and social as well as legal reasons since disclosure of normally privileged information can have legal and personal consequences. If asked by clients to conceal information, psychologists warn clients that any information deemed relevant by the psychologist must and will be revealed and advise the clients of their right to privacy. Under these circumstances, psychologists advise clients that they may seek further consultation with their attorneys prior to proceeding with the evaluation. Psychologists respect the client's right to refuse to disclose. Psychologists decide whether such refusal is relevant to the issues before the court and should itself be reported.

Psychologists recognize that unique issues pertain to limitations of the child(ren)'s confidentiality. Psychologists recognize that disclosures of child(ren)'s normally privileged statements to private parties in-

involved in the case may pose special risks to the safety and well-being of the child(ren). Psychologists exercise extreme caution in revealing children's disclosures of abuse to alleged abusers and/or to other parties who may support, collude, or otherwise increase the risk of abuse. Psychologists balance this need for caution with the conflicting need to allow the accused a fair opportunity to explain children's allegations. When necessary, psychologists enlist the assistance of the court or the Division of Youth and Family Services in protecting the child(ren) before waiving the child(ren)'s confidentiality. Alternatively, psychologists explain the need for an incomplete evaluation to the court until it is possible to ensure that adequate protections are in place. Psychologists recognize a particularly significant obligation to avoid using evaluation procedures which would make the evaluation a threatening experience to the child(ren). Psychologists assess the likely impact of evaluation procedures on the children's sense of safety and security by considering the special vulnerability of children and their limited understanding of the nature of the proceedings and protections offered by the legal system. Psychologists understand that the existence of objective precautions does not in and of itself ensure the child(ren)'s sense of safety and security.

Psychologists recognize that disclosures of abused spouses' normally privileged statements to private parties involved in the case may pose special risks to the safety and well-being of domestic violence victims. Psychologists exercise extreme caution in revealing spousal disclosures of abuse to alleged abusers and/or to other parties who may support, collude, or otherwise increase the risk of abuse. Psychologists balance the need for caution with the need to allow the accused a fair opportunity to explain the allegations. Psychologists advise the alleged victim in advance when his/her confidentiality will not be maintained and respond to all requests for special procedures with respect and caution.

B. Psychologists provide judges, attorneys and the parties to the custody evaluation with access to the results of the evaluation, but make every effort not to reveal notes, test books, and raw test data to persons untrained in their interpretation.

C. An attorney's subpoena alone is not sufficient to authorize disclosure of protected information, except to the Office of the Attorney General or the State Board of Psychological Examiners. Other than these exceptions, a treating psychologist resists releasing notes and

case files which contain material that can be misinterpreted by untrained people. When asked for such material, a treating psychologist makes a reasonable effort to substitute a report instead.

## Guidelines

### 7. DOCUMENTATION

Psychologists maintain adequate documentation of their contacts with clients and of the clinically significant information derived from these contacts and from which their conclusions are drawn.

## Commentary

### 7. DOCUMENTATION

Psychologists maintain detailed written records. In addition, psychologists may choose to use audio or video recording depending upon their understanding of the requirements of the specific case or situation.

## Guidelines

### 8. REPORTS AND RECOMMENDATIONS

A. Psychologists advise all parties of the limits of the evaluation results.

B. Psychologists restrict all statements and conclusions drawn to (1) the party or parties directly evaluated, and/or (2) hypothetical statements based on current accepted scientific knowledge and practice.

C. In their reports and testimony, psychologists consider all reasonable custody hypotheses. Psychologists explicitly distinguish between the data and their interpretation of its relevance to the custody issues.

D. Psychologists recognize the obligation to formulate conclusions based on a reasonable degree of psychological or scientific certainty or probability.

E. Psychologists are careful to make only those recommendations which are clearly based upon inferences from scientific knowledge, or to qualify their recommendations. The scientific basis of the recommendations should be made explicit.

F. In cases involving abuse allegations, psychologists may advise the court as to scientific knowledge available concerning issues of child protection and treatment.

## Commentary

### 8. REPORTS AND RECOMMENDATIONS

A. Limitations of the evaluation instruments, problems with reliability, and the impact of forensic contexts on evaluation data are explained to all parties. Psychologists advise the court and/or attorneys when some questions in a custody evaluation cannot be answered despite a thorough attempt to do so. Psychologists advise the court and/or attorneys regarding the factors which are responsible for the lack of clarity (e.g., age, emotional status of child, parties' refusal to disclose), and the circumstances under which further clarity may be obtained in the present or future.

B. Psychologists do not make statements and/or draw conclusions about parties not directly evaluated.

C. Psychologists formulate all relevant custody hypotheses and actively search for data which both confirm and refute each one regardless of the specific party(ies) requesting services from the psychologist. Psychologists present fairly all data which supports and refutes each custody hypothesis.

D. Reasonable psychological certainty is defined for purposes of these guidelines as certainty that is based on either substantive clinical observations, empirical research results, well-accepted theoretical propositions, or an integration of all three, and that is clearly not speculative. Psychologists recognize that custody evaluations differ from clinical assessments in that the psychologist is held to a more stringent standard of professional certainty or probability than is the case for a working clinical hypothesis in the ongoing treatment of a psychotherapy patient. Psychologists recognize that qualification as an expert witness constitutes an explicit recognition by the court that the psychologist's capacity to deliver an opinion in the matter under consideration exceeds that of the lay public. Psychologists therefore recognize that offering clinical hypotheses as though they were scientifically valid conclusions is inappropriate. Psychologists recognize the obligation to weigh carefully all conclusions and recommendations against the standard of reasonable psychological or scientific certainty or probability.

In cases involving allegations of abuse, psychologists may further draw only those conclusions about the occurrence of abuse which are founded on adequate scientific evidence.

E. Psychologists distinguish between recommendations as to the ultimate legal issue, which are the



province of the legal system, and expert opinions which are based on direct inferences from scientific data. Expert opinions are based exclusively on direct inferences from the scientific data collected in and of relevance to the custody evaluation. However, psychologists recognize that the provision of scientific, psychological data represents only one component in deciding the ultimate legal issue. Psychologists acknowledge that other components such as case law and statute, social policy and moral values, and other information, enter into deciding the ultimate legal issue. When asked for their expert opinions in a custody evaluation, psychologists make recommendations based exclusively on inferences from the scientific data and acknowledge the possible impact of other factors.

F. Psychologists advise attorneys and the court regarding the conditions under which a child's risk of abuse is decreased or increased, as well as the circumstances under which future disclosures of abuse are likely to be minimized or maximized.

Psychologists recognize that substantiation of allegations of abuse indicates the need for specialized treatment and intervention. Psychologists inform the court that, if appropriate treatment is not obtained, the need for protection of the child or spouse is no less no matter how long it has been since the last reported incident of violence or abuse.

## **Guidelines**

### **9. PUBLIC AND PROFESSIONAL COMMUNICATIONS**

A. Psychologists do not discuss with the media cases in active litigation.

B. Psychologists recognize that the advancement of clinical science entails research and scholarship. Psychologists do not use cases which are in active litigation for these purposes. Psychologists recognize the obligation to conceal the identities of the parties in using case material from a custody evaluation for scholarly and research purposes.

# LEGAL BASE—CUSTODY

## I. Expert Witnesses

A. Court Appointment: R. 5:3-3 of the Rules Governing the Courts of the State of New Jersey sets forth the circumstances under which the court appoints its own medical, psychological and social experts and the scope of the appointment. The Rules also maintain the right of each party to retain his/her own expert regardless of whether or not the court chooses to retain its own expert. The rule, in its 1993 form, is set forth here *verbatim, due to its importance in all cases in which the psychologist is court-appointed. Psychologists should check that the pertinent provisions of that rule are current at the time of use.*

1. Medical, Psychological and Social Experts: Whenever the court, in its discretion, concludes that disposition of an issue will be assisted by expert opinion, and whether or not the parties propose to offer or have offered their own experts' opinions, the court may order any person under its jurisdiction to be examined by a physician, psychiatrist, psychologist, or other health or mental health professional designated by it. The court may also direct who shall pay the cost of such examination. The court may also require a social investigation by a probation officer or other person at any time during the proceeding before it.

2. Selection of Experts: Experts appointed hereunder may be selected by the mutual agreement of the parties or independently by the court. The court shall establish the scope of the expert's assignment in the order of appointment. Neither party shall be bound by the report of the expert so appointed.

3. Investigation by Experts: Any expert appointed by the court shall be permitted to conduct an investigation independently, to obtain his or her report from any source, and may make contact directly with any party from whom information is sought within the scope of the order of appointment. The parties shall be entitled to have their attorneys and/or experts present during any examination by a court-appointed expert. The expert shall not communicate with the court except upon prior notice to the parties and their attorneys who shall be afforded an opportunity to be present and to be heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by the expert by letter or telephonic means, whereafter further communications with the court, which may be conducted informally by conference or conference call, shall be done only with the participation of the parties and their counsel.

4. Submission of Report: The expert should con-

sult with the appointing judge in order to ascertain whether the report should be sent only to the judge by the expert or, alternatively, sent to counsel for the parties (or *pro se* litigants). The parties shall thereafter be permitted a reasonable opportunity to conduct discovery in regard thereto, including, but not limited to, the right to take the deposition of the expert.

5. **Use of Evidence:** An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence subject to cross-examination by the parties.

6. **Use of Private Experts:** Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court, upon the same or similar issues. In that event, the expert should send the report only to the party (or counsel) by whom the expert was retained.

B. **Evid. R. 702** provides that:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify therein in the form of an opinion or otherwise.

C. **Potential Liability of Expert:** 97 N.J. 242 (1984)

In the case of *Levine v. Wiss & Co.*, the husband brought an action against an accountant and accounting firm which had been appointed to act as an "impartial expert." The New Jersey Supreme Court held that accountants, selected by the litigants and appointed by the court to act as an "impartial expert," could be held liable for negligence if the professional has deviated from accepted standards applicable to the accounting profession. The court held that: "One who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession in good standing in similar communities."

D. **Privilege Issues:** According to New Jersey Court Rule 4:10-2, the parties to any litigation may obtain discovery regarding any matter which is not privileged and is relevant to the case. However, the best interests of the child prevail over both the marriage counselor privilege, *M. v. K.*, 186 N.J. Super. 363 (Ch. Div. 1982), and the psychologist's privilege, *Fitzgibbon v. Fitzgibbon*, 197 N.J. Super. 63 (Ch. Div. 1984) and *Arena v. Saphier*, 201 N.J. Super. 79 (App. Div. 1985).

## II. Custody

A. **Introduction:** The New Jersey Superior Court has jurisdiction to determine the custody of children when the parents are separated (N.J.S.A. 9:2-3), pending a matrimonial action or after entry of the divorce judgment (N.J.S.A. 2A:34-23) and after a divorce (N.J.S.A. 9:2-1).

### B. Statutory Overview:

1. N.J.S.A. 9:2-1 through 9:2-7.2 sets forth the statutory guidelines for visitation and custody determinations, including the following:

- (a) **Temporary Custody** (N.J.S.A. 9:2-3): Until the court determines final custody, the court shall determine temporary custody based upon the child's best interest with due regard to the caretaking arrangement that existed previously.
- (b) **Authorized Awards** (N.J.S.A. 9:2-4(a)): The court may award joint custody to include provision for residential arrangements and provision for "consultation between the parents in making major decisions regarding the child's health, education and general welfare," sole custody or any other custody arrangement as the court may determine to be in the best interests of the child (emphasis added).
- (c) **Factors the Court Must Consider:** In deciding whether to award joint, sole or other custodial arrangements, N.J.S.A. 9:2-4(c) provides that the court may appoint a guardian *ad litem* or an attorney or both to represent the minor child's interests. (See below, "Factors.")
- (d) **Death of Parent Having Custody:** N.J.S.A. 9:2-5 states that custody does not automatically revert to the non-custodial parent until an Order to that effect is entered.
- (e) **Visitation Rights for Grandparents or Siblings:** N.J.S.A. 9:2-7.1 confers standing to a grandparent or sibling to request visitation in those cases in which the parent(s) of the child at issue is/are deceased, divorced or separated.

2. **Supervised Visitation Programs:** N.J.S.A. 2A:12-7 through 2A:12-12 facilitates supervised visitation by "making the facilities and members of local community organizations available to assist in court-ordered supervised visitation."

3. **Uniform Child Custody Jurisdiction Act and Parental Kidnapping Prevention Act:** These are comprehensive statutory schemes which have been adopted by the Federal government and all of the states and the District of Columbia. Their provisions dictate the appropriate jurisdiction in cases in which more than one state could otherwise have jurisdiction.

**4. Domestic Violence Actions (N.J.S.A. 2C:25-1):**

**(a) Visitation Provisions (N.J.S.A. 2C:25-13(b)(3)):** Any visitation Order entered pursuant to a complaint under the Prevention of Domestic Violence Act must protect the safety and well being of the plaintiff and minor children. These Orders must specify the place and frequency of visitation and may include the designation of a third party or other form of supervised visitation. Additionally, plaintiff can request an investigation or evaluation of the risk of harm to the child(ren) prior to the entry of a visitation Order. (N.J.S.A. 2C:25-23(b)(3)(a)).

**(b) Custody Provisions (N.J.S.A. 2C:25-13(b)(11)):** When making temporary custody decisions in domestic violence cases, the Court must "presume that the best interests of the child are served by an award of custody to the non-abusive parent." This mandate reflects the policy set forth in the legislative findings section, 2C:25-2:

"... That there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence."

**C. Standards:** The "best interests" of the child are firmly established. In determining "best interests," the Court considers the following factors:

1. The "safety, happiness, mental and moral welfare of the child." *Fantoney v. Fantoney*, 21 N.J. 525, 536 (1956).

2. "Stability, love, family happiness, tolerance and ultimately, support of the independence." *In Re: Baby M*, 109 N.J. 396 (1988).

**D. Factors:** According to N.J.S.A. 9:2-4, the Court should consider (but is not limited to) the following factors in any custody case:

1. The parents' ability to agree, communicate and cooperate in matters relating to the child;

2. The parents' willingness to accept custody and any history of unwillingness to allow visitation not based on substantiated abuse;

3. The interaction and relationship of the child with its parents and siblings;

4. The history of domestic violence, if any;

5. The safety of the child and the safety of either parent from physical abuse by the other parent;

6. The preference of the child when of sufficient age and capacity to reason as to form an intelligent decision";

7. The needs of the child;

8. The stability of the home environment offered;

9. The quality and continuity of the child's education;

10. The fitness of the parent;

11. The geographic proximity of the parents' home;

12. The extent and quality of the time spent with the child prior to and subsequent to the separation;

13. The parents' employment responsibilities;

14. The age and number of the children.

**E. Tender Years Doctrine:** Despite N.J.S.A. 9:2-4 giving both parents equal rights, the Tender Years Doctrine has persisted. This doctrine embodies a presumption that the mother's care is ordinarily in the child's best interests. It was endorsed in the landmark decision of *In Re: Baby M*, 109 N.J. 396 (1988).

**F. Joint Custody:** This is the "preferred alternative" according to the case of *Beck v. Beck*, 86 N.J. 480 (1981). However, it is not appropriate in every case. The following factors are to be considered:

1. At a minimum, both parents must be "fit" both physically and psychologically;

2. Both parents must be willing to accept custody, although their opposition to joint custody does not preclude the court from ordering that arrangement.

3. The parents exhibit a potential for cooperation in matters of childrearing. This feature does not translate into a requirement that the parents have an amicable relationship. Although such a positive relationship is preferable, a successful joint custody arrangement requires only that the parents be able to isolate their personal conflicts from their roles as parents and that the children be spared whatever resentments and rancor the parents may harbor.

**G. Modification:** In the case of *Mastropole v. Mastropole*, 181 N.J. Super 130 (App. Div. 1981), where a father who had agreed to sole custody remarried and sought joint custody, the burden is on the moving party to show that a significant change of circumstances has occurred and that the change will be in the child's interests.

**\*The in-camera interview:** According to New Jersey Court Rule 5:3-2, the court in most cases may direct that any proceeding or severable part of a proceeding involving the welfare or status of a child be conducted in private. In fact, if the court determines that it is in the child's best interests, it may order that the child not be present at trial; if the child's testimony is necessary, the testimony may be taken privately in chambers. A verbatim record must be made of all in-camera proceedings, including in-chamber testimony by or interrogation of a child.

### III. Interference and Removal Issues

#### A. Statutory Overview:

1. **Interference with Custody:** N.J.S.A. 2C:13-4 expanded the law concerning the criminal offense of interfering with custody of a minor child. Under the expanded Act, a person (including a parent, guardian or other lawful custodian) commits the crime of interference with custody if he/she:

- (a) Takes or detains a minor child in order to conceal him and thereby deprive the child's parent, guardian, or lawful custodian of custody or visitation; or
- (b) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody or visitation rights to a minor child, takes or conceals the child for the purpose of depriving the other parent, guardian or lawful custodian of custody or visitation, or to evade the court's jurisdiction; or
- (c) After being served with process or having actual knowledge of an action affecting the protective services needs of a minor child pursuant to Title 9 of the New Jersey Statutes in an action affecting custody, but prior to a final order determining custody rights, takes or conceals the child to evade the court's jurisdiction; or
- (d) After the issuance of a temporary or final order specifying custody or visitation rights, takes or conceals a minor child from the other parent, guardian or lawful custodian in violation of the order.

The Act also upgraded the crime to a third-degree crime punishable by a term of imprisonment of three to five years or a fine up to \$7,500 or both. The offender must also make restitution of all reasonable expenses and costs incurred by the other parent in securing the child's return. Most importantly, the presumption of non-imprisonment for a first offender who commits a third-degree crime does not apply to the third-degree crime of interference with custody. If the child is taken, detained, enticed or concealed outside the United States, then the crime is upgraded to a crime of the second degree.

The affirmative defenses to a prosecution under this statute depend upon whether it is a custodial parent who takes the child or another individual. Where the individual is not the custodial parent, the affirmative defenses are as follows:

- (a) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if

the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services;

- (b) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or
- (c) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

Where the individual taking the child is the custodial parent or has a "right of custody," it is an affirmative defense if that parent reasonably believed he/she was fleeing from imminent physical danger from the other parent and as soon as reasonably practicable:

- (a) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services; or
- (b) Commences an action affecting custody in an appropriate court.

2. **Removal:** N.J.S.A. 9:2-2 provides: When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. The court, upon application of any person on behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.

**B. Removal Standards:** The current leading case on the issue of removal is *Holder v. Polanski*, 111 N.J. 34-1 (1988). In that Supreme Court case, the court substantially modified prior case law when it held that "any sincere, good-faith reason will suffice" and that "a custodial parent need not establish a 'real advantage' from the move." The *Holder* court established the procedure to be applied in all removal cases as follows:

Once the court finds that the custodial parent wants to move for a good-faith reason, it should then consider

whether the move will be inimical to the best interests of the children or adversely affect the visitation rights of the noncustodial parent. Not every change in a visitation schedule will prejudice those rights, particularly if the noncustodial parent has not exercised them before the custodial parent seeks to move from the state. If the move will not substantially change the visitation rights, then the court should determine whether the move would be inimical to the best interests of the children.

If, however, the move will require substantial changes in the visitation schedule, proofs concerning the prospective advantages of the move, the integrity of the motives of the party, and the development of a reasonable visitation schedule remain important. The emphasis, however, should not be on whether the children or the custodial parent will benefit from the move, but on whether the children will suffer from it. Motives are relevant, but if the custodial parent is acting in good faith and not to frustrate the noncustodial parent's visitation rights, that should suffice. Maintenance of a reasonable visitation schedule by the noncustodial parent remains a critical concern, but in our mobile society, it may be possible to honor that schedule and still recognize the right of a custodial parent to move. In resolving the tension between a custodial parent's right to move and a noncustodial parent's visitation rights, the beacon remains the best interest of the children. *Id.* at 353-354 (citations to *Cooper* omitted).

**EXHIBIT E**

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## **Guidelines for Child Custody Evaluations in Divorce Proceedings**

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### **Introduction**

Decisions regarding child custody and other parenting arrangements occur within several different legal contexts, including parental divorce, guardianship, neglect or abuse proceedings, and termination of parental rights. The following guidelines were developed for psychologists conducting child custody evaluation, specifically within the context of parental divorce. These guidelines build upon the American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct* (APA, 1992) and are aspirational in intent. *As guidelines, they are not intended to be either mandatory or exhaustive. The goal of the guidelines is to promote proficiency in using psychological expertise in conducting child custody evaluations.*

Parental divorce requires a restructuring of parental rights and responsibilities in relation to children. If the parents can agree to a restructuring arrangement, which they do in the overwhelming proportion (90%) of divorce custody cases (Melton, Petrila, Poythress, & Slobogin, 1987), there is no dispute for the court to decide. However, if the parents are unable to reach such an agreement, the court must help to determine the relative allocation of decision making authority and physical contact each parent will have with the child. The courts typically apply a "best interest of the child" standard in determining this restructuring of rights and responsibilities.

Psychologists provide an important service to children and the courts by providing competent, objective, impartial information in assessing the best interests of the child; by demonstrating a clear sense of direction and purpose in conducting a child custody evaluation; by performing their roles ethically; and by clarifying to all involved the nature and scope of the evaluation. The Ethics Committee of the American Psychological Association has noted that psychologists' involvement in custody disputes has at times raised questions in regard to the misuse of psychologists' influence, sometimes resulting in



complaints against psychologists being brought to the attention of the APA Ethics Committee ( APA Ethics Committee, 1985; Hall & Hare-Mustin, 1983; Keith-Spiegel & Koocher, 1985; Mills, 1984 ) and raising questions in the legal and forensic literature ( Grisso, 1986; Melton et al., 1987; Mnookin, 1975; Ochroch, 1982; Okpaku, 1976; Weithorn, 1987 ).

Particular competencies and knowledge are required for child custody evaluations to provide adequate and appropriate psychological services to the court. Child custody evaluation in the context of parental divorce can be an extremely demanding task. For competing parents the stakes are high as they participate in a process fraught with tension and anxiety. The stress on the psychologist/evaluator can become great. Tension surrounding child custody evaluation can become further heightened when there are accusations of child abuse, neglect, and/or family violence.

Psychology is in a position to make significant contributions to child custody decisions. Psychological data and expertise, gained through a child custody evaluation, can provide an additional source of information and an additional perspective not otherwise readily available to the court on what appears to be in a child's best interest, and thus can increase the fairness of the determination the court must make.

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## Guidelines for Child Custody Evaluations in Divorce Proceedings

### I. Orienting Guidelines: Purpose of a Child Custody Evaluation

1. The primary purpose of the evaluation is to assess the best psychological interests of the child.

The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best psychological interests of the child. More specific questions may be raised by the court.

2. The child's interests and well-being are paramount.

In a child custody evaluation, the child's interests and well-being are paramount. Parents competing for custody, as well as others, may have legitimate concerns, but the child's best interests must prevail.

3. The focus of the evaluation is on parenting capacity, the

psychological and developmental needs of the child, and the resulting fit.

In considering psychological factors affecting the best interests of the child, the psychologist focuses on the parenting capacity of the prospective custodians in conjunction with the psychological and developmental needs of each involved child. This involves (a) an assessment of the adults' capacities for parenting, including whatever knowledge, attributes, skills, and abilities, or lack thereof, are present; (b) an assessment of the psychological functioning and developmental needs of each child and of the wishes of each child where appropriate; and (c) an assessment of the functional ability of each parent to meet these needs, including an evaluation of the interaction between each adult and child.

The values of the parents relevant to parenting, ability to plan for the child's future needs, capacity to provide a stable and loving home, and any potential for inappropriate behavior or misconduct that might negatively influence the child also are considered. Psychopathology may be relevant to such an assessment, insofar as it has impact on the child or the ability to parent, but it is not the primary focus.

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## II. General Guidelines: Preparing for a Child Custody Evaluation

### 4. The role of the psychologist is that of a professional expert who strives to maintain an objective, impartial stance.

The role of the psychologist is as a professional expert. The psychologist does not act as a judge, who makes the ultimate decision applying the law to all relevant evidence. Neither does the psychologist act as an advocating attorney, who strives to present his or her client's best possible case. The psychologist, in a balanced, impartial manner, informs and advises the court and the prospective custodians of the child of the relevant psychological factors pertaining to the custody issue. The psychologist should be impartial regardless of whether he or she is retained by the court or by a party to the proceedings. If either the psychologist or the client cannot accept this neutral role, the psychologist should consider withdrawing from the case. If not permitted to withdraw, in such circumstances, the psychologist acknowledges past roles and other factors that could affect impartiality.

### 5. The psychologist gains specialized competence.

- A. A psychologist contemplating performing child custody evaluations is aware that special competencies and

knowledge are required for the undertaking of such evaluations. Competence in performing psychological assessments of children, adults, and families is necessary but not sufficient. Education, training, experience, and/or supervision in the areas of child and family development, child and family psychopathology, and the impact of divorce on children help to prepare the psychologist to participate competently in child custody evaluations. The psychologist also strives to become familiar with applicable legal standards and procedures, including laws governing divorce and custody adjudications in his or her state or jurisdiction.

- B. The psychologist uses current knowledge of scientific and professional developments, consistent with accepted clinical and scientific standards, in selecting data collection methods and procedures. The *Standards for Educational and Psychological Testing* (APA, 1985) are adhered to in the use of psychological tests and other assessment tools.
- C. In the course of conducting child custody evaluations, allegations of child abuse, neglect, family violence, or other issues may occur that are not necessarily within the scope of a particular evaluator's expertise. If this is so, the psychologist seeks additional consultation, supervision, and/or specialized knowledge, training, or experience in child abuse, neglect, and family violence to address these complex issues. The psychologist is familiar with the laws of his or her state addressing child abuse, neglect, and family violence and acts accordingly.

- 6. The psychologist is aware of personal and societal biases and engages in nondiscriminatory practice.

The psychologist engaging in child custody evaluations is aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations. The psychologist recognizes and strives to overcome any such biases or withdraws from the evaluation.

- 7. The psychologist avoids multiple relationships.

Psychologists generally avoid conducting a child custody evaluation in a case in which the psychologist served in a therapeutic role for the child or his or her immediate family or has had other involvement that may compromise the psychologist's objectivity. This should not, however, preclude the psychologist from testifying in the case as a fact witness concerning treatment of the child. In addition, during the course of a child custody evaluation, a psychologist does not accept any of the involved

participants in the evaluation as a therapy client. Therapeutic contact with the child or involved participants following a child custody evaluation is undertaken with caution.

A psychologist asked to testify regarding a therapy client who is involved in a child custody case is aware of the limitations and possible biases inherent in such a role and the possible impact on the ongoing therapeutic relationship. Although the court may require the psychologist to testify as a fact witness regarding factual information he or she became aware of in a professional relationship with a client, that psychologist should generally decline the role of an expert witness who gives a professional opinion regarding custody and visitation issues (see Ethical Standard 7.03) unless so ordered by the court.

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### **III. Procedural Guidelines: Conducting a Child Custody Evaluation**

**8. The scope of the evaluation is determined by the evaluator, based on the nature of the referral question.**

The scope of the custody-related evaluation is determined by the nature of the question or issue raised by the referring person or the court, or is inherent in the situation. Although comprehensive child custody evaluations generally require an evaluation of all parents or guardians and children, as well as observations of interactions between them, the scope of the assessment in a particular case may be limited to evaluating the parental capacity of one parent without attempting to compare the parents or to make recommendations. Likewise, the scope may be limited to evaluating the child. Or a psychologist may be asked to critique the assumptions and methodology of the assessment of another mental health professional. A psychologist also might serve as an expert witness in the area of child development, providing expertise to the court without relating it specifically to the parties involved in a case.

**9. The psychologist obtains informed consent from all adult participants and, as appropriate, informs child participants.**

In undertaking child custody evaluations, the psychologist ensures that each adult participant is aware of (a) the purpose, nature, and method of the evaluation; (b) who has requested the psychologist's services; and (c) who will be paying the fees. The psychologist informs adult participants about the nature of the assessment instruments and techniques and informs those participants about the possible disposition of the data collected. The psychologist provides this information, as appropriate, to children, to the extent that they are able to understand.

**10. The psychologist informs participants about the limits of confidentiality and the disclosure of information.**

A psychologist conducting a child custody evaluation ensures that the participants, including children to the extent feasible, are aware of the limits of confidentiality characterizing the professional relationship with the psychologist. The psychologist informs participants that in consenting to the evaluation, they are consenting to disclosure of the evaluation's findings in the context of the forthcoming litigation and in any other proceedings deemed necessary by the courts. A psychologist obtains a waiver of confidentiality from all adult participants or from their authorized legal representatives.

**11. The psychologist uses multiple methods of data gathering.**

The psychologist strives to use the most appropriate methods available for addressing the questions raised in a specific child custody evaluation and generally uses multiple methods of data gathering, including, but not limited to, clinical interviews, observation, and/or psychological assessments. Important facts and opinions are documented from at least two sources whenever their reliability is questionable. The psychologist, for example, may review potentially relevant reports (e.g., from schools, health care providers, child care providers, agencies, and institutions). Psychologists may also interview extended family, friends, and other individuals on occasions when the information is likely to be useful. If information is gathered from third parties that is significant and may be used as a basis for conclusions, psychologists corroborate it by at least one other source wherever possible and appropriate and document this in the report.

**12. The psychologist neither overinterprets nor inappropriately interprets clinical or assessment data.**

The psychologist refrains from drawing conclusions not adequately supported by the data. The psychologist interprets any data from interviews or tests, as well as any questions of data reliability and validity, cautiously and conservatively, seeking convergent validity. The psychologist strives to acknowledge to the court any limitations in methods or data used.

**13. The psychologist does not give any opinion regarding the psychological functioning of any individual who has not been personally evaluated.**

This guideline, however, does not preclude the psychologist from reporting what an evaluated individual (such as the parent or child) has stated or from addressing theoretical issues or hypothetical

questions, so long as the limited basis of the information is noted.

14. Recommendations, if any, are based on what is in the best psychological interests of the child.

Although the profession has not reached consensus about whether psychologists ought to make recommendations about the final custody determination to the courts, psychologists are obligated to be aware of the arguments on both sides of this issue and to be able to explain the logic of their position concerning their own practice.

If the psychologist does choose to make custody recommendations, these recommendations should be derived from sound psychological data and must be based on the best interests of the child in the particular case. Recommendations are based on articulated assumptions, data, interpretations, and inferences based upon established professional and scientific standards. Psychologists guard against relying on their own biases or unsupported beliefs in rendering opinions in particular cases.

15. The psychologist clarifies financial arrangements.

Financial arrangements are clarified and agreed upon prior to commencing a child custody evaluation. When billing for a child custody evaluation, the psychologist does not misrepresent his or her services for reimbursement purposes.

16. The psychologist maintains written records.

All records obtained in the process of conducting a child custody evaluation are properly maintained and filed in accord with the *APA Record Keeping Guidelines* (APA, 1993) and relevant statutory guidelines.

All raw data and interview information are recorded with an eye toward their possible review by other psychologists or the court, where legally permitted. Upon request, appropriate reports are made available to the court.

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**EXHIBIT F**

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# Practice Parameters for Child Custody Evaluation

## ABSTRACT

These practice parameters are presented as a guide for clinicians evaluating the often delicate and complex issues surrounding a child custody dispute. The historical basis of child custody and the various judicial presumptions that have guided courts are reviewed. The differences between performing child custody evaluation and engaging in traditional clinical practice are emphasized. Issues that are common to all child custody disputes are presented, including continuity and quality of attachments, preference, parental alienation, special needs of children, education, gender issues, sibling relationships, parents' physical and mental health, parents' work schedules, parents' finances, styles of parenting and discipline, conflict resolution, social support systems, cultural and ethnic issues, ethics and values, and religion. In addition, special issues that complicate custody evaluations are discussed, including infants in custody disputes, homosexual parents, grandparents' rights, parental kidnapping, relocation problems, allegations of sexual abuse, and advances in reproductive technology, such as frozen embryos, oocyte donation, and artificial insemination. An outline is provided that describes the complete evaluation process, from assessing referrals and planning a strategy through conducting clinical interviews, writing the report, and testifying in court. *J. Am. Acad. Child Adolesc. Psychiatry*, 1997, 36(10 Supplement):57S-68S. Key Words: child custody, forensic psychiatry, joint custody, court, parenting, practice parameters, guidelines.

Because evaluating the needs of children and adolescents in child custody disputes is complicated and requires specialized knowledge and techniques, practice parameters can be helpful to clinicians and, ultimately, the families they evaluate. These parameters take into account that well-meaning, ethical, and competent clinicians may approach this work in different ways. However, certain methodologies and clinical and ethical boundaries have emerged over time and are presented in these parameters. The recommendations in these parameters are basic principles that should be considered by clinicians who perform custody evaluations and consult with judges and attorneys. Just as competent clinicians may vary in their approaches to evaluation, diagnosis, and treatment, qualified forensic evaluators may differ in their methods.

*These parameters were developed by Stephen P. Herman, M.D., principal author, and the Work Group on Quality Issues: John E. Dunne, M.D., Chair, and William Ayres, M.D., former Chair; Valerie Arnold, M.D., Elaine Benedek, M.D., R. Scott Brown, M.D., William Brown, M.D., Gail A. Bernstein, M.D., Eric Bryson, M.D., Oscar Bukstein, M.D., Richard L. Gross, M.D., Robert King, M.D., Joan Kintler, M.D., Harrison Leonard, M.D., William Litzonke, M.D., Jon McClellan, M.D., and Kellie Shau, M.D. The authors thank Lee Haller, M.D., and Diane Scherby, M.D., for their thoughtful review. AACAP Staff: L. Elizabeth Sloan, L.P.C., and Christine M. Miles. A draft of these parameters was distributed to the AACAP membership for comments at the 1996 Annual Meeting. The parameters were approved by the AACAP Council on June 6, 1997. They are available to AACAP members on the World Wide Web ([www.aacap.org](http://www.aacap.org)).*

Reprints requests to AACAP Communications Department, 3615 Wisconsin Ave., N.W., Washington, DC 20016.

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Although these parameters are not meant to be followed exactly, they contain principles that should be followed when performing child custody evaluations, which are often complicated.

## LITERATURE REVIEW

Medline searches were conducted in 1993 and 1996 for the term "child custody" in the titles of articles. Therefore, only papers primarily concerned with child custody have been cited.

### Historical Development

Approximately one in two marriages in the United States ends in divorce, affecting about 1,000,000 children per year. Approximately 10% of divorces involve custody litigation. Thousands of children, therefore, are at the center of often protracted legal battles.

A number of authors stress the importance of understanding the historical basis of the custody dispute (Derdeyn, 1976) and evaluating the clinician's role of undertaking a comprehensive evaluation, rendering a readable, helpful report, and, if necessary, testifying in court. Haller (1981) stresses the importance of preparing a strategy for the evaluation and warns against evaluations that assess or support only one party to the dispute. Benedek and Benedek (1980) discuss the role of the expert and the importance of clinician education in the specifics of child custody evaluation. Benedek and Scherby (1985) discuss child custody assessment and the "best interests" presumption. Weithorn (1987)

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with lawyer(s) or the clarify the questions, answer and determine if the expert can legitimately provide the service. The expert should provide his or her time, distance, and effort to perform the service. The expert should be aware that there are no guarantees that there are no conflicts of interest or the perception of a conflict. The expert's reputation in general, the following: being a member; being the attorney or his or her social or professional contacts; the parents, such as staff or attending the case as the evaluator; conflict of interest; be alerted, during a case. Sometimes, neither situation if the evaluator reporting and monitoring.

of fees should be carefully. If the evaluation on a private basis, a

Ethical issues are frequently encountered in forensic evaluations. The potential evaluator must consider whether he or she has biases or prior involvement with any of the parties involved in the case that might alter the professionalism of the evaluation. The evaluator must have sufficient time to complete the evaluation in a timely manner and adequate scheduling flexibility to work with the judicial system. Although the fees for forensic evaluations are usually higher than for clinical treatment, fees should not be exorbitant but should be within the community standard. The evaluator, in almost all circumstances, should not refer any of the parties to himself or herself for treatment after the custody evaluation to avoid a conflict of interest.

A number of issues are common to many, if not all, custody disputes and frequently arise during the evaluations. If these issues are not raised by the families, the clinician should initiate discussion about them. Collecting data on these issues provides a sound basis for the evaluator's opinions and recommendations.

The assessment of the quality of the attachments between the parents and the children is the centerpiece of the evaluation. In the opinion of most courts, the concept of "the best interests of the child" has as much to do with the parent-child relationship as with the validity of each parent's plans for the child. The evaluator should assess the parent-child connections, recognize and protect the opportunities for the child to maintain continuity with attachment figures, and consider how these attachments should enter into the forensic recommendations (Rutter, 1995).

The child's stated preference of where he or she would rather live also may be an issue (Alexander and Sichel, 1991; Schowalter, 1979). Judges tend to give more weight to stated preference when the child is 12 years of age or older. Small children infrequently volunteer a preference. When they do, the evaluator should assess its meaning and whether the child came to this opinion freely or was rehearsed or heavily influenced by a parent (Yates, 1988).

There are times during a custody dispute when a child can become extremely hostile toward one of the parents. The child finds nothing positive in his or her relationship with the parent and prefers no contact. The evaluator must assess this apparent alienation and form a hypothesis of its origins and

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**EXHIBIT G**



## **High-Conflict Custody Cases: Reforming the System for Children— Conference Report and Action Plan\***

Conference sponsored by the American Bar Association  
Family Law Section and The Johnson Foundation

Wingspread Conference Center  
Racine, Wisconsin  
September 8-10, 2000

The goal of this interdisciplinary, international conference was to develop recommendations for changes in the legal and mental health systems to reduce the impact of high-conflict custody cases on children. The participants in the conference wish to thank the American Bar Association Family Law Section and The Johnson Foundation for bringing us together to discuss this extremely important topic and for facilitating the creation of this conference report.

### **PREAMBLE**

High-conflict custody cases seriously harm the children involved. Children caught in the middle of high-conflict cases face perpetual emotional turmoil. They may become alienated from a parent or be harmed by exposure to domestic violence. Children trapped in high-conflict custody disputes may be at greater risk for substance abuse and educational failure. In addition, high-conflict custody cases drain court, family and mental health resources, take additional time, and create anxiety for all involved, from the legal and mental health professionals.

\* The Conference reporter was Sarah H. Ramsey and the final report was submitted on November 1, 2000. For additional information or to comment on the Report, contact the Conference organizer, Linda D. Elrod, or the reporter (contact information is included on the attached participants list).

to the litigants and their families. Children suffer in an adversarial system that declares winners and losers and does not provide adequate support mechanisms for the parties.

High-conflict custody cases are marked by a lack of trust between the parents, a high level of anger and a willingness to engage in repetitive litigation. High-conflict custody cases can emanate from any (or all) of the participants in a custody dispute—parents who have not managed their conflict responsibly; attorneys whose representation of their clients adds additional and unnecessary conflict to the proceedings; mental health professionals whose interaction with parents, children, attorneys or the court system exacerbates the conflict; or court systems in which procedures, delays or errors cause unfairness, frustration or facilitate the continuation of the conflict. High conflict cases can arise when parents, attorneys or mental health professionals become invested in the conflict or when parents are in a dysfunctional relationship, have mental disorders, are engaged in criminal or quasi-criminal conduct, substance abuse or there are allegations of domestic violence, or child abuse or neglect.

Family law is unique. Unlike cases in which the litigants never see each other after the judge or jury makes a decision, cases involving custody of children are never final and can continue throughout the child's minority. Civil and criminal laws may be involved. The goal of the family law system should be to give the parties the tools to restructure their lives after the immediate case. Central tenets of this system should be to reduce conflict, assure physical security, provide adequate support services to reduce harm to children, and to enable the family to manage its own affairs. To accomplish this, judges, lawyers and mental health professionals need to adopt new models for resolving family disputes that focus on the welfare of children.

These new models need to be supported by an increase in research on high-conflict families and the impact of conflict on children. We need to find ways to distinguish high-conflict cases from those in which the parents are able to manage their affairs without significant state intervention. We have too little information on the impacts of custody disputes, divorce and dispute resolution processes. From necessity, we too often proceed from anecdotal information and individual observation. Case management, intervention, education, and therapy programs need to be evaluated. Research and evaluation should be interdisciplinary and directed at developing and improving the new models and identifying successful strategies for lessening the harm caused to children from custody disputes.

These new models also need adequate financial support. Judges, lawyers and mental health professionals should work together to raise the status of courts that handle family matters and to ensure that these courts have adequate support and access to services for the families that they serve. Appropriate legal representation and mental health assistance should be available to all families without regard to income. Funding should be structured to ensure high quality, independent services.

The conference identified mental health professionals, lawyers and judges as those having the greatest power to influence the conduct of high-conflict custody cases and concluded that they should bear the primary responsibility for preventing or reducing conflict in high-conflict cases. High-conflict custody cases need a specialized approach. Judges, lawyers and mental health professionals should have special training in handling high-conflict cases. They must develop ways to work together under new collaborative models to more effectively identify and resolve high-conflict custody cases. They must remain sensitive to the need to encourage cooperative parents to resolve their disputes and not burden them with unnecessary intervention. They should provide information to parents about the legal process, the availability of conflict-reducing dispute resolution mechanisms, and the harm caused to children by parental conflict. These new models should hold all the participants in custody cases accountable for their contribution to increasing or decreasing levels of conflict, be sensitive to the rights and privacy of individuals and be prepared to intervene to the extent necessary to protect children.

A key element for the development and implementation of a model to address high-conflict custody cases is the collaborative efforts of the bench, bar and mental health professionals. Our report makes recommendations in specific categories to each of these groups and is designed to stimulate action by articulating "operational principles" that can form the basis of policy and procedural changes.

## I. MENTAL HEALTH PROFESSIONALS

**Basic Principle:** Mental health professionals should take a proactive role in developing a community that supports responsible, healthy parenting and in developing resources and abilities to meet the needs of separating, never married, and divorced families.

### *1) Clarify Roles*

- a) Mental health professionals should ensure that the legal community and court are aware of and adhere to the ethical rules and standards promulgated by their mental health professional organizations concerning child custody evaluations and other custody related issues. Mental health professionals are obligated also to understand court-connected rules or standards of practice, if any, and to adhere to these standards in conducting these evaluations or investigations. If a conflict exists between standards, these should be discussed in joint meetings with court representatives.
- b) The mental health community must be clear about and respect the role boundaries and responsibilities that are involved in the process of divorce and separation, distinguishing among roles of evaluator, therapist, parent coordinator, mediator, arbitrator and other professionals involved in the case.
- c) Mental health professionals should, in collaboration with other service providers and attorneys, consider ways to conserve the family's available financial resources and time and prioritize and coordinate their efforts when recommending services. When multiple mental health professionals work with separated and divorced families, they should coordinate their roles in order to bring about the best outcome for the family and the child.

### *2) Improve Child Custody Evaluations*

- a) Child custody evaluations should be neutral and include evaluations of both parents and all children and be undertaken with the agreement of the parents and the children, if appropriate, or by court order.
- b) A "child custody evaluation" is comparative and focuses on family relationships, parental capacities, and the needs of the children. In contrast, a "parental capacity evaluation" focuses on one parent. A "parental capacity evaluation" should not be confused with a "child custody evaluation." A "child custody evaluation" requires the voluntary or court-ordered participation of both parents and the

- children. A "parental capacity evaluation" can be conducted on behalf of one parent alone.
- c) Qualifications for child custody evaluators should be uniform and each state should have a court rule or statute establishing these qualifications. Mental health professionals should strive to develop and adhere to national qualification guidelines for child custody evaluations in divorce proceedings.
  - d) Child custody evaluators should have training and continuing education in relevant areas including the differentiation of different types of conflict; the impact of conflict on child and adult development and functioning; child-interview techniques; custody evaluation protocols; domestic violence; child abuse and neglect; substance abuse; and basic principles of child custody law and procedure are essential for neutral evaluators.
  - e) If there are conflicting custody evaluations, the court should order that the evaluators meet and attempt to resolve their differences before they testify in court. Meeting structures that reduce conflict among professionals should be considered, such as using the child's representative to chair or a mediator to facilitate the meeting. If the evaluators are unable to resolve differences, they should report the reason(s) for their differences to the court.
  - f) In reporting or testifying about their custody or visitation recommendations, mental health professionals should distinguish among their clinical judgments, research-based opinions, and philosophical positions. In addition, mental health professionals should summarize their data-gathering procedures, information sources and time spent and present all relevant information on limitations of the evaluation that result from unobtainable information, failure of a party to cooperate or the circumstances of particular interviews.
  - g) Evaluation reports should be written in plain English.
    - (1) Avoid technical jargon.
    - (2) Accentuate positive parental attributes as well as negative ones.
    - (3) Avoid adding to the family's shame by stigmatizing or blaming parents or children.
    - (4) Psychiatric diagnoses should not be used unless they are relevant to parenting.
    - (5) Legal terms should be used only when necessary.
    - (6) If making a recommendation to the court regarding a parenting plan, reports should provide clear, detailed recommendations that are consistent with the health, safety, welfare and best interest of the child.

- h) Evaluators should work with the courts to establish appropriate confidentiality requirements for custody evaluations.
  - (1) Before an evaluation is undertaken, the evaluator and the court should ensure that the attorneys and family members know who will have access to the report and who will be allowed to have a copy of the report.
  - (2) Evaluators should consider whether, when and how they should share their observations and recommendations with the parents or children as a way of reducing conflicts. When feasible, evaluators shall consider meeting with the parents to share observations and recommendations rather than leaving that to the legal professionals and the court.

### *3) Treatment*

- a) Before treating a child involved in a custody dispute, mental health professionals should make good faith efforts to obtain permission of both parents, except for immediate needs in cases of emergency. If permission is not obtained, unless one parent has sole legal custody, the parent must get a court order for treatment. Mental health professionals should make affirmative efforts to determine if a custody dispute is contemplated.
- b) Mental health professionals involved in treating members of divorcing and separating families should describe their obligations of confidentiality to their clients and obtain adequate informed consent prior to beginning treatment.
- c) Mental health professionals who are involved in treating members of a divorcing or separating family should get signed waivers of confidentiality to allow them to confer among themselves concerning issues of parenting and the child's interest and welfare. Such shared communication should remain confidential and not be revealed to the parties or their attorneys.
- d) Children's therapists should be aware of the possible negative impact of their testimony on the therapeutic relationship. When required to testify, children's therapists should:
  - (1) assure that privilege has been appropriately waived;
  - (2) clearly indicate that they do not have the information needed to make specific recommendations regarding custody or visitation;
  - (3) explain that information they provide to the court on how the child may react to proposed arrangements can be based only on developmental needs or stated preferences of the child, and not on a comparison of the parents.

## II. LAWYERS

**Basic Principle:** Lawyers should take a proactive role in reducing conflict between disputing parents and promoting collaborative problem solving with parents, mental health professionals and the court.

### *1) The Lawyer's Responsibility to Promote Conflict Resolution*

- a) Lawyers should diligently exercise their counseling function in assisting their clients to avoid inappropriate conflict in dealing with custody-related issues, including the ways in which the parties and counsel pursue litigation. Lawyers should discuss with client parents the negative consequences of custody conflicts and disputes on their children and should advise parents about the availability of resources to reduce conflict. ←
- b) Lawyers should discuss alternatives to litigation, such as mediation, with their clients.
- c) As a general rule, lawyers should encourage their clients to cooperate with forensic custody and mental health evaluations. ←
- d) Lawyers have a duty to realistically evaluate their client's case and not raise false expectations.
- e) Lawyers should encourage early court interventions to identify issues in high-conflict cases and should refer clients to available resources and processes to help them resolve their conflicts outside the courtroom. ←
- f) Lawyers should assist one another and the court in expeditiously determining the best interests of the child by cooperating in defining and limiting the issues, procedures, and evidence necessary to determine the best interest of the child.
- g) Lawyers should maintain a civil demeanor and encourage their clients to follow their example.
- h) Lawyers and parties should not use the media, child protective services, or other means to create or exacerbate conflict and should be sensitive to the child's need for privacy.
- i) Lawyers should be trained in child development, child abuse and neglect, domestic violence, family dynamics, and alternative conflict resolution and be knowledgeable about cross-disciplinary issues affecting their high-conflict custody cases, such as competencies of other professionals and available community resources.
- j) Lawyers should develop and participate in special continuing legal education programs for high-conflict custody cases and encourage

law schools to incorporate interdisciplinary training in mental health and dispute resolution into the family law curriculum to improve lawyers' ability to reduce conflict in custody cases.

*2) The Child's Representative*

- a) As a general rule, in high-conflict cases a child should have a lawyer or representative who is independent of the parents and their lawyers. In some limited circumstances a representative for the child may not be necessary, perhaps in cases involving very young children in which the judge believes that the child's interests are being properly considered by the parties, for example.
- b) Taking into account lawyers' ethical rules, jurisdictions should define and describe the roles to be played by the different legal representatives of children, distinguishing, for example, between the role of a guardian ad litem and the child's lawyer.
- c) Jurisdictions should adopt appointment criteria and performance standards for appointment of children's representatives.

*3) Ethical Considerations*

- a) The legal profession should develop protocols for working with unrepresented opposing parties in high-conflict cases.
- b) The ethical rules should be revised to develop separate rules specific to the context of family law, particularly to include rules which promote achievement of the collaborative, cooperative principles set forth above.
- c) Mechanisms need to be developed that will allow independent representation of indigent parents, but prevent the inappropriate use of public funds to fuel conflict. Providing public funding for attorneys for indigent parents in custody proceedings creates an ethical dilemma in the context of high-conflict custody cases. On the one hand, parents who need legal assistance and are indigent should receive it; on the other hand, when parents are paying their attorneys themselves, the cost of litigation can serve as a means for constraining conflict.

### III. THE COURT SYSTEM

**Basic Principle:** Courts should proactively seek ways of helping parents in a custody dispute protect or restore healthy relationships with their children and develop mechanisms for resolving disputes with each other in a timely manner in the best interests of their children.



*1) Improve Case Management*

- a) There should be a timely identification and screening process that includes short assessment tools to identify high-conflict cases.
- b) Courts should impose control and structure on high-conflict custody cases through the use of management tools such as pre-trial conferences.
- c) There should be a quick and efficient calendaring system that prioritizes high-conflict cases.
- d) Courts should have designated case managers and adequate technology and information management systems to link and track cases involving the same parties and to facilitate connection to community resources.
- e) Courts should have a system for coordinating and monitoring the multiple claims, deadlines, services, and other litigation and resource requirements in high-conflict cases.
- f) Courts should require the timely development and submission of plans from parents that, in a manner that seeks to preserve a meaningful role for both parents, describe the time each parent will spend with the child and the responsibility and system for making decisions about the child, consistent with the need for physical and emotional safety of parents and child.

*2) Provide Services*

- a) The following services and programs should be available to all families, without regard to income, through the court or referrals:
  - (1) Mediation.
  - (2) Custody evaluations conducted by a joint neutral evaluator appointed by the court who should serve throughout the case.
  - (3) Investigations, such as assessments of the child's home environment and education status.
  - (4) Education programs tailored to meet the needs of different families, such as a program that emphasizes constructive parenting behavior and preserving safety for high conflict families.
  - (5) Parenting monitors, coordinators, or masters who are professionals trained to manage chronic, recurring disputes, such as visitation conflicts, and to help parents adhere to court orders.
  - (6) Group and individual mental health treatment with specific goals designed to help parents manage their conflict responsibly and ease the stress on the child.
  - (7) Supervised visitation and transfer of the child from one parent to another.

- (ii) Drug and alcohol screening and treatment referrals.
- (iii) Domestic violence services.
- (iv) Trained children's representatives.
- b) Interventions and services should be carefully tailored to meet the unique needs of each individual or family. Issues that should be considered in developing a service plan are the level of intrusiveness of the services, the number of requirements being imposed, accountability for the adequacy of the service, and the parents' level of interest in the service.
- c) The court should disseminate objective literature to all parties involved in custody disputes on the laws and procedures involved. Parents and children should have a roadmap that explains the court system, what is expected of them and the roles of other participants. The courts should distribute information about community resources available to the family.

### *3) Appropriate Selection of Judges*

- a) Judges handling high-conflict custody cases should have specialized education and training on dynamics of high-conflict cases and effective ways to manage conflict.
- b) Judicial assignment should promote continuity and tenure that assist handling high-conflict cases.
- c) Judges should be trained in child development, child abuse and neglect, domestic violence, family dynamics and alternative conflict resolution, and be knowledgeable about cross-disciplinary issues affecting high-conflict custody cases, such as competencies of other professionals and available community resources.

### *4) Improve Representation*

- a) Judges should assist lawyers in maintaining focus and reducing conflict.
- b) Judges should utilize appropriate sanctions for lawyers who file frivolous or bad faith motions.
- c) Judges should take the initiative in maintaining civility and reasonableness in pleadings and interactions among counsel and the parties.
- d) Courts should be empowered to appoint a lawyer or representative for the child in high conflict custody cases.
- e) Judges and lawyers should insure that specialized education and training is required for all of the child's representatives in high-conflict cases.

- f) Judges should determine if parents wish to proceed pro se and should provide additional educational materials to parents who chose to proceed pro se. If parents need counsel but are indigent, counsel should be appointed.

*5) Structural Changes*

- a) Courts should continue to explore ways to coordinate services, reduce fragmentation and provide continuity and consistency for a variety of family disputes through implementing new structures such as the unified family court model.
- b) Procedures should be created to identify deficiencies of a custody evaluation report prepared by a court-appointed evaluator. There should be a presumption that the court will order only one evaluation, rebuttable through a separate hearing on whether a new evaluator should be appointed because of report inadequacies or other unusual circumstances.
- c) Courts should develop procedures for expeditious and cost-effective procedures for examination and cross-examination of evaluators, such as telephone conferences; audio or video examinations; videoconferences; and scheduling of appearances.
- d) Courts should work toward constraining costs and developing means of resolving custody cases that will be affordable for most parents.

## **EXHIBIT H**

CIVIL ACTION  
CASE MANAGEMENT ORDER  
Pursuant to Rule 5:5-6

\_\_\_\_\_  
Plaintiff,

\_\_\_\_\_  
Defendant.

This matter being opened to the Court on \_\_\_\_\_, 20 01.

\_\_\_\_ (a) during a case management conference before:

\_\_\_\_ (b) during a telephonic conference with:

\_\_\_\_ (c) by consent of both attorneys

Plaintiff being represented by \_\_\_\_\_ of the firm of \_\_\_\_\_

and the Defendant being represented by \_\_\_\_\_

of the firm of \_\_\_\_\_  
and good cause existing for entry of this Order.

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 20 01, ORDERED that the above titled matter is assigned  
to the following track. (If custody is in issue the case shall be placed on the Priority Track.)

A. EXPEDITED TRACK \_\_\_\_\_ (Discovery shall not exceed 90 days)  
If "A" checked go directly to Page 3.

B. STANDARD TRACK \_\_\_\_\_ (Discovery shall not exceed 120 days)

C. PRIORITY TRACK \_\_\_\_\_ (Discovery to be set at first Case Management Conference)

D. COMPLEX TRACK \_\_\_\_\_ (Discovery to be set at first Case Management Conference)

IT FURTHER APPEARING that on the issue of Custody and Parenting Time

\_\_\_\_ There are no children. \_\_\_\_\_ The children are emancipated.

\_\_\_\_ All issues relating to Custody and Parenting Time have been resolved pursuant to the Custody  
and Parenting Time stipulation attached hereto

\_\_\_\_ Custody is in issue. \_\_\_\_\_ DV Order in effect.

\_\_\_\_ The matter is referred to Custody/Parenting Time mediation.

\_\_\_\_ The Custody/Parenting Time Plan, required pursuant to R. 5:6-5 is attached hereto/or will be submitted

by \_\_\_\_\_  
Mediation shall be concluded by \_\_\_\_\_ unless otherwise extended by Court Order

IT FURTHER APPEARING that the following issues are in dispute:

\_\_\_\_ Child Support

\_\_\_\_ Counsel Fees

\_\_\_\_ Cause of Action

\_\_\_\_ Alimony

\_\_\_\_ Medical Insurance

\_\_\_\_ Other Issues:

\_\_\_\_ Equitable Distribution

\_\_\_\_ Life Insurance

IT IS FURTHER ORDERED that the following be furnished no later than the dates indicated:

☐ Case Information Statement filed? Plaintiff (Yes \_\_\_\_\_ No \_\_\_\_\_) - Defendant (Yes \_\_\_\_\_ No \_\_\_\_\_)  
CIS to be filed by Plaintiff \_\_\_\_\_ Defendant \_\_\_\_\_ Both \_\_\_\_\_ by \_\_\_\_\_ 20 01

☐ Plaintiff/Defendant/Both shall propound Interrogatories/Notice to Produce by: \_\_\_\_\_ 20 01

☐ Plaintiff/Defendant/Both shall answer Interrogatories by \_\_\_\_\_ 2001

Exhibit H

- ☐ Plaintiff/Defendant/Both shall complete Depositions by 2001
- ☐ Plaintiff/Defendant/Both shall produce proof of bank account balances, pension, or other records, such as:  
by 2001
- ☐ Plaintiff/Defendant/Both shall also: \_\_\_\_\_

	Date (00/00/00)	Joint or Court Appointed Expert	Plaintiff Expert	Defendant Expert	Cost Paid by (H/W)
Real Estate appraisals to be completed by _____	[ ]		[ ]	[ ]	_____
Personalty appraisals to be completed by _____	[ ]		[ ]	[ ]	_____
Business appraisals to be completed by _____	[ ]		[ ]	[ ]	_____
Pension appraisals to be completed by _____	[ ]		[ ]	[ ]	_____
Other (Expert Reports or related issues): _____					_____
_____					_____
_____					_____
_____					_____

Exhibit H

IT IS FURTHER ORDERED that this matter shall be scheduled before the County Early Settlement Panel on \_\_\_\_\_, 20 01, at \_\_\_\_\_.

IT IS FURTHER ORDERED that a second Case Management Conference has been scheduled on \_\_\_\_\_, 20 01, at \_\_\_\_\_, before \_\_\_\_\_.

IT IS FURTHER ORDERED that all motions, emergent applications, plenary hearings and the ultimate trial of this matter, if necessary, shall be handled by Judge \_\_\_\_\_. All future correspondence to the Court shall be forwarded to the Judge assigned. The attorney appearing in Priority or Complex Track Cases should be familiar with and have full authority to participate in the case.

IT IS FURTHER ORDERED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Trial Date \_\_\_\_\_

Trial Date To Be Determined

Signature)

We hereby consent to the form and entry of the within Order.

(Judge's

Attorney for Plaintiff

Attorney for Defendant

Attorney Address: \_\_\_\_\_  
\_\_\_\_\_

Attorney Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax No. \_\_\_\_\_

Phone: \_\_\_\_\_ Fax No. \_\_\_\_\_

### Important

DO NOT provide the address and telephone number of a party if a Domestic Violence Restraining Order is in effect.

Plaintiff: \_\_\_\_\_

Defendant: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax No. \_\_\_\_\_

Phone: \_\_\_\_\_ Fax

Social Security No. \_\_\_\_\_

No. \_\_\_\_\_  
Social Security  
No. \_\_\_\_\_

Exhibit H